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Clerk of Circuit Court
Outagamie County
2013CF001074

1 STATE OF WISCONSIN CIRCUIT COURT OUTAGAMIE COUNTY

2 **STATE OF WISCONSIN,**

3 Plaintiff,

4 v. **Case No. 13-CF-1074**

5 **CHONG LENG LEE,**

6 Defendant.

7 **JURY TRIAL - DAY SEVEN**

9 BEFORE: **HONORABLE GREGORY B. GILL, JR.**
10 Circuit Court Judge, Branch IV
11 Outagamie County Justice Center
 Appleton, WI 54911

12 DATE: **March 3, 2016**

14 APPEARANCES: **CARRIE SCHNEIDER**
15 District Attorney
 Appearing on behalf of the State

16 **ANDREW MAIER and ALEXANDER DUROS**
17 Assistant District Attorneys
 Appearing on behalf of the State

18 **DEBORAH VISHNY and EVAN WEITZ**
19 Attorneys at Law
 Appearing on behalf of the Defendant

20 **CHONG LENG LEE**
21 Defendant
 Appearing in person

22

23

24 Joan Biese
25 Official Reporter, Branch IV
 Outagamie County

I N D E X**WITNESSES****PAGE****JOE THOR**

Examination by Attorney Maier.....	5
Examination by Attorney Vishny.....	38
Voir Dire Examination by Attorney Maier.....	97
Examination by Attorney Maier.....	100
Examination by Attorney Vishny.....	109
Examination by Attorney Maier.....	113
Questions by Jury.....	114
Examination by Attorney Maier.....	115

DANIEL J. CAMPBELL

Examination by Attorney Maier.....	118
Examination by Attorney Vishny.....	123

JOHN SCHIRA

Examination by Attorney Schneider.....	124
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<u>1</u>	<u>EXHIBIT</u>	<u>PAGE</u>
2	4 - Letter.....	184
3	32- Photo Board-Photos 32A-32K.....	140
3	33G- Photo.....	47
4	33H- Photo.....	47
4	33I- Photo.....	49
5	33K- Photo.....	50
5	33L- Photo.....	50
6	72- Map.....	26
6	83- Photo.....	182
7	84- Photo.....	182
7	85- Photo.....	182
8	86- Photo.....	199
8	87- Photo.....	199
9	93- Diagram-Joe Thor.....	11
9	94- Video.....	202
10	95- Hat (Brewers).....	200
10	104- Vest (White).....	42
11	105- Coat (White/Gray) Patterned.....	50
11	122- Paul Lee Statement.....	194
12	133- Hat (Red).....	22
12	160- Transcript-Interview of Joe Thor.....	60
13	162- Transcript-Interview of Joe Thor-Item 142.....	92
13	163- Transcript-Interview of Joe Thor-Sergeant Rabas.	93
14		
15		
16		
17		
18		
19		
20		
21		
22		
23		
24		
25		

1 **TRANSCRIPT OF PROCEEDINGS**

2 THE COURT: Please be seated. We are on
3 the record in *State of Wisconsin v. Chong Lee*.

4 Mr. Lee appears in person, along with his
5 counsel, Attorney Evan Weitz and Deja Vishny. Also
6 seated at counsel table appearing under the student
7 practice rule is Mr. Solomon Gatton. Representing
8 the State of Wisconsin is Outagamie County District
9 Attorney Carrie Schneider, along with Assistant
10 District Attorneys Alex Duros and Andrew Maier.

11 And we'll just wait a moment.

12 ATTORNEY VISHNY: Can I talk to Miss
13 Peterson for a minute please?

14 THE COURT: Absolutely.
15 Defense all set?

16 ATTORNEY VISHNY: Yes. Thank you.

17 THE COURT: Okay. Please rise for the
18 jury.

19 (The jury was escorted into the courtroom.)

20 THE COURT: Morning, everyone. Please be
21 seated.

22 Is the State prepared to call its first witness?

23 ATTORNEY MAIER: We are, Your Honor. The
24 State calls Joe Thor.

25 THE COURT: Sir, if you would please remain

1 standing, the clerk will swear you in.

2 THE CLERK: Please raise your right hand.

3 (Oath administered to witness.)

4 THE WITNESS: Yes, I swear.

5 THE CLERK: Please state your full name and
6 spell it for the record please.

7 THE WITNESS: Joe Thor, J-O-E, T-H-O-R.

8 THE COURT: All right. Mr. Thor, you may
9 be seated. I would ask that you please adjust the
10 microphone so that it's able to pick up your voice a
11 little better. Also, if you do need any water, that
12 is a new bottle of water.

13 THE WITNESS: Okay. Thank you.

14 THE COURT: You're welcome.

15 Whenever the State is ready.

16 **EXAMINATION OF JOE THOR**

17 **BY ATTORNEY MAIER:**

18 Q How you doing, Mr. Thor?

19 A Good.

20 Q Do you know someone named Chong Lee?

21 A Yes, I do.

22 Q How long have you known Chong Lee?

23 A Pretty much since we were kids.

24 Q And is he the defendant seated in court today?

25 A Yes, he is.

1 Q You know someone named Phong Lee?

2 A Yes, I do.

3 Q And is he someone that is also a friend from way
4 back?

5 A Yeah. We went to school together.

6 Q How about Paul Lee?

7 A Yes, I also know him too.

8 Q Do you know someone named Tou Shoua Lee?

9 A Yes, I do.

10 Q Do you know somebody named Johnny Thao?

11 A Yes, I do.

12 Q How well do you know him?

13 A Johnny Thao, he is my uncle.

14 Q How old is Johnny Thao?

15 A I believe about 30s, 30 something.

16 Q Okay. I want to talk to you about something that
17 happened in the early part of December of 2013, and I
18 realize you may not recall the exact date or the day
19 of the week, but it was an incident that happened at
20 Luna Lounge in Appleton. Was there a -- a night that
21 you and some friends were at City Limits bar in
22 Menasha?

23 A Yes.

24 Q Who was at City Limits with you?

25 A I cannot recall everyone, but I know I was there

1 so --

2 Q Was -- was Chong Lee with you there?

3 A Yes.

4 Q And after you were at City Limits, where did you
5 go?

6 A I believe to Sharks.

7 Q And that's the pool hall in downtown Appleton?

8 A Yes.

9 Q After Sharks, where did -- where did you go?

10 A Luna Lounge.

11 Q And that -- not just you personally, but the -- kind
12 of the whole group, right?

13 A It was like scattered, like couple people went and
14 then I don't know. Later on everybody just ended up
15 there.

16 Q Okay. Was there a point near the end of the night
17 where you and Paul Lee went downstairs to the
18 bathroom?

19 A Yes.

20 Q When you came back up, was Paul ahead of you or
21 behind you?

22 A Ahead of me.

23 Q Okay. And what happened after you and Paul came back
24 upstairs from the bathroom?

25 A I believe there was an argument.

1 Q Who was involved in the argument?

2 A The victim and Paul.

3 Q Did you see Phong anywhere nearby?

4 A Yes.

5 Q Were there people, I'll just say associated with --
6 do you know the -- the victim's name?

7 A Just from the news reports and stuff.

8 Q Josh, right?

9 A Yes.

10 Q Were there people, I'll say, associated with Josh who
11 were in that area as well?

12 A Yes.

13 Q Any females?

14 A Yes. I believe his girlfriend.

15 Q These are people that -- how well did you know
16 them?

17 A I didn't know any of them.

18 Q Okay. When you come back upstairs from going to the
19 bathrooms, Paul's in front of you and you see this
20 disagreement with Paul and Josh, correct?

21 A Yes.

22 Q Now, how -- where are you as this disagreement
23 happens?

24 A I believe I was to the left side of Paul, so pretty
25 much right behind him.

1 Q Behind and to the left?

2 A Yeah.

3 Q Where is Phong?

4 A To the right.

5 Q Your right?

6 A His right.

7 Q Paul's right.

8 A Yes.

9 Q Okay. Is Phong also -- is he ahead of Paul, even
10 with Paul or behind Paul?

11 A He's more behind him also.

12 Q So you guys make kind of a -- a triangle more than a
13 line; is that fair to say?

14 A Yes.

15 Q The other people, Josh, his girlfriend, and the other
16 people that are there with him, is -- who's in the
17 front of that group?

18 A I believe it was him, but I believe his girlfriend
19 was trying to stop him so she was in front of him.

20 Q The disagreement that happens, is it verbal or
21 physical or both?

22 A It was just verbal. Verbal at first.

23 Q Okay. Then what happened?

24 A Then I believe Paul swung at him.

25 Q At who?

1 A The victim.

2 Q Did you see Paul connect with Josh?

3 A No, I did not.

4 Q And I guess if I need to ask it a different way, was
5 it that you didn't see or that he didn't connect?

6 A I think he connect, but it did not even hurt the guy
7 so Paul kind of got scared.

8 Q Then what happened?

9 A He jumped back and kind of pinned me to the wall, me
10 and Phong.

11 Q Who jumped back?

12 A Paul. Because he -- he jumped back just because Mr.
13 Richards was pretty big guy.

14 Q Now you say that this sort of pinned you against the
15 wall. Can you describe this wall for me?

16 A I believe it was the stairway wall.

17 Q Is it all the way to the ceiling or something
18 different?

19 A Not all the way to the ceiling.

20 Q Something like the jury rail?

21 A Yes, yes.

22 THE COURT: Are we going to need lights,
23 Mr. Maier?

24 ATTORNEY MAIER: Not yet. Thank you.

25 ATTORNEY SCHNEIDER: Just for the record,

1 why don't we note that the jury rail comes up about
2 waist height just for the average person just so that
3 later there's no confusion.

4 ATTORNEY VISHNY: I don't know.

5 THE COURT: Why don't we say it's a little
6 over three feet tall.

7 ATTORNEY SCHNEIDER: Like a half wall.

8 THE COURT: All right.

9 ATTORNEY MAIER: Okay. All right.

10 Q (BY ATTORNEY MAIER) Mr. Thor, I'm going to show you
11 what's been marked as Exhibit 93. Do you see the
12 exhibit sticker on there?

13 A Yes.

14 Q Okay. Take a look at that exhibit and let us know if
15 you recognize what that is.

16 A I believe it's the front of the Luna Lounge.

17 Q And you -- a couple days after this incident you were
18 interviewed by the police at the police department,
19 correct?

20 A Yes.

21 Q Is that when this diagram was created?

22 A Possibly. I'm not too sure.

23 Q Okay. Up in the upper right there's a date and a
24 name and it says interviewed at APD, correct?

25 A Yes.

1 Q Did you write those?

2 A No, I did not.

3 Q What is the date that's on top there?

4 A December 10th, 2013.

5 Q 13. And then the name?

6 A Joe Thor.

7 Q Okay. Looking at the content on this diagram, are
8 you able to say -- is that something that you marked
9 up or something that was done, you know, written by
10 the police but you pointed out where people were?

11 A I believe I just pointed out where people was.

12 Q And in taking a look at that, is that an accurate
13 diagram as far as where people were that night?

14 A Yes.

15 Q Okay. What I'm going to do, Mr. Thor, is throw it up
16 on the screen here. Can you see the screen okay?

17 A Yes.

18 Q Can you see that all right?

19 A Yes.

20 Q And understanding that there's some handwriting
21 there, there is a name on there that's more or less
22 the top of the stairs. It says Mikey Thao. Is that
23 somebody that you know?

24 A Yes.

25 Q And is that more or less where he was?

1 A He was more of a -- beside me or like a little behind
2 me.
3 Q I'm sorry. A little behind you?
4 A Yeah.
5 Q So you're -- your name is right here, right?
6 A Yes.
7 Q And there's an X next to you? The X is you, right?
8 A Yes.
9 Q So Mikey Thao is -- if he's -- I'm sorry, if he's
10 next to you, what does that mean I guess?
11 A Like more to the wall.
12 Q Okay. Like up in this area?
13 A A little behind me more, you know, yeah. Yeah.
14 About there. But too at the side a little bit more.
15 A little more angle.
16 Q You say he's behind you and to the side?
17 A Yeah. Kind of like right here pretty much.
18 Q And you just pointed -- I just blocked everybody's
19 view of it. You just sort of turned and pointed off
20 your left shoulder?
21 A Yeah. Correct.
22 Q Okay. So people are positioned here when Paul takes
23 the swing at Mr. Richards, right?
24 A Yes.
25 Q And you say -- I'm sorry. And after this punch Paul

1 throws, which at the most didn't do much?

2 A No.

3 Q You say he moves back and that pins you and Phong?

4 A He -- sorry. He kind of jumped back.

5 Q Jumped back?

6 A Yeah.

7 Q And that moves you and Phong up against this half
8 wall?

9 A Yes.

10 Q Okay. Now that's giving -- that's more space then,
11 right, between Paul and Mr. Richards?

12 A Yes.

13 Q What happens next?

14 A Mr. Richards started cocking his arm back and coming
15 towards us.

16 Q Now you moved your right arm back, right?

17 A Yeah, yeah.

18 Q And you -- I'm going to say a word. If you don't
19 know what I mean then let me know. You sort of
20 almost loaded it about armpit height?

21 A Yeah, yes, because --

22 Q Is that what he did?

23 A Yeah. Because I was scared. I didn't know who he
24 was going to hit or if he was going to hit anyone.

25 Q Okay. Now at some point you said -- earlier you said

1 that Josh's girlfriend was in front of him.

2 A He kind of threw her off because I believe he got mad
3 after he got hit so --

4 Q Okay. So she's not in front of him anymore.

5 A No.

6 Q Where is she at this point?

7 A He kind of just threw her and she just fell to the
8 side.

9 Q Okay. Where are the -- the other guys that are --
10 are there with him? Are they in the same spots they
11 were in before Paul throws the punch?

12 A They were kind of behind him so -- and to the side of
13 him. I believe his left side.

14 Q More or less the -- the same spots they were that you
15 got marked on the --

16 A Yes.

17 Q -- diagram? And the diagram, it says girlfriend and
18 there is two spots where it says buddies, right?

19 A Yes, correct.

20 THE COURT: Actually, while you're drinking
21 is a good time to mention this. If you can, Mr.
22 Maier, the same instruction, Mr. Maier, if you can
23 wait until Mr. Thor finishes speaking, and likewise,
24 Mr. Thor, if you let Mr. Maier finish the questions,
25 even if you know the answer or if you know what the

1 question is asking, and that's largely so my court
2 reporter can get everyone's notes. She's only able
3 to take one person at a time.

4 THE WITNESS: Okay. Sorry.

5 THE COURT: No problem.

6 Q (BY ATTORNEY MAIER) These buddies of Josh's, what
7 race are they?

8 A Not too sure. I believe they're Caucasian because
9 it's kind of dark too but I believe they were
10 Caucasian.

11 Q They're not -- they're at least -- they look white.

12 A Yes.

13 Q And Mikey Thao is also Asian, correct?

14 A Correct.

15 Q All right. So as Josh cocks his fist back, you made
16 a fist also, correct?

17 A Yeah.

18 Q And that's what he did?

19 A Yeah, yeah.

20 Q He cocks his fist back, you're seeing this happen,
21 what happens next, Mr. Thor?

22 A I just kind of put my arms up and just prepare for --
23 to get hit.

24 Q So you're worried about yourself getting hit?

25 A Yes.

1 Q What happens then?

2 A And then a flash and then I heard a bang and then I
3 looked in front of me and then Mr. Richards was on
4 the ground.

5 Q Okay. Before you saw the flash and heard the bang
6 and saw Mr. Richards go to the floor, what were you
7 looking at?

8 A I was looking at Mr. Richards.

9 Q Okay. And looking at him continued seeing the flash
10 and hearing the bang?

11 A Yes.

12 Q What do you recall seeing, Mr. Thor?

13 A I seen him on the ground and not getting up.

14 Q I mean before that. When you're looking at him and
15 you see the flash and hear the bang, what do you
16 see?

17 A Just a bunch of people and then just a quick flash.

18 Q Do you recall seeing anything with Mr. Richards'
19 face?

20 A What do you mean by that?

21 Q Did he have any reaction as the flash and bang
22 happened?

23 A I can't recall, it was so quick. He was already on
24 the ground.

25 Q When he -- and so he falls after this, correct?

1 A Correct.

2 Q What direction does he fall?

3 A I'm not too sure. All I know is he was on the ground
4 and then I kind of panicked and just ran.

5 THE COURT: Do we still need the lights?

6 ATTORNEY MAIER: I think so. I'm going to
7 work off the diagram a little more.

8 THE COURT: Just let me know then.

9 ATTORNEY MAIER: Thank you, Your Honor.

10 Q (BY ATTORNEY MAIER) Now, Mr. Thor, how many times
11 had you been to Luna before that night?

12 A Plenty.

13 Q Okay. So you're pretty familiar with -- it didn't
14 take much to get you to realize this was the early
15 part or the front part of Luna Lounge, right?

16 A Correct.

17 Q And we've got -- we've got space here between this
18 wall on the right edge and what I'll say is kind of a
19 corner here. Do you see what I'm talking about?

20 A Yes.

21 Q And when I say corner, I'm looking more or less in
22 the middle of this part of the diagram. On this
23 diagram, the distance from this far area, this
24 corner --

25 ATTORNEY VISHNY: Object to leading.

1 THE COURT: Well, let -- finish the
2 question and then I'll determine.

3 Q (BY ATTORNEY MAIER) -- it appears to be
4 approximately the same as the distance from the wall
5 where this opening is?

6 THE COURT: Now I'll sustain it. Please
7 rephrase.

8 Q (BY ATTORNEY MAIER) How wide is that opening from
9 the entryway to the bar area?

10 A A little bigger than a doorway. It's about, just
11 measuring by those doors there, about that size but
12 no doors connected to it.

13 Q Kind of an archway.

14 A Yeah.

15 Q Five feet sound about right?

16 A Yeah, sounds about right.

17 Q Okay. And then is it five feet or shorter or longer
18 to go from this point, which would be -- if you're
19 coming from the bar, it would be the right -- sort of
20 at the right entrance. See what I mean?

21 A Yes.

22 Q To the corner that's to your far right, how far is
23 that?

24 A Can you repeat that? Sorry about that.

25 Q That's okay. If you're coming from the bar and

1 you're walking through this arched entranceway, how
2 far would it be, you know, if you're -- if you put
3 your hands on the right side of the arch and stepped
4 through, there's a corner to your right, correct?

5 A Yes.

6 Q How far is that corner?

7 A Away from me?

8 Q Yes.

9 A Pretty far yet.

10 Q Pretty far. So this diagram is obviously not to
11 scale.

12 A Yeah. Yeah. It's not to scale.

13 Q So you have -- I think before we got onto that, you
14 were saying that after you see the flash and hear the
15 bang and you see Mr. Richards fall to the floor that
16 you -- did you say got scared?

17 A Yeah. I just got scared and ran away right away.

18 Q Where did you run?

19 A Out the doors to my left, ran out.

20 Q The -- the door was to your left, correct?

21 A Yes.

22 Q And that's what you mean by that?

23 A At an angle yet though.

24 Q When you get outside the doors at Luna, do you have
25 any idea where Paul is?

1 A I think it was right behind me.

2 Q Okay. Do you know where Phong is?

3 A I believe right behind him.

4 Q When you get out through the doors, what do you do?

5 A I took a right and turned the corner.

6 Q Okay. So that's onto what street?

7 A Division.

8 Q And what did you do when you got onto Division

9 Street?

10 A Then I cut through the parking lot and I was just

11 headed towards my house.

12 Q Okay. Did you end up at your house?

13 A Yes, I did.

14 Q Is that the first place you went?

15 A Yes.

16 Q How long did it take before Paul caught up to you?

17 A About five minutes or so because I ran really fast

18 and then they couldn't keep up.

19 Q Okay. What about Phong, how long did it take for him

20 to catch up?

21 A He was right next to Paul so --

22 Q Okay. Somewhere along the lines between the Luna

23 Lounge and your house, the three of you made a stop

24 or two, correct?

25 A Yes, correct.

1 Q And what did you do at one of those stops along the
2 way?

3 A I tossed my hat, I believe.

4 Q What kind of hat was it?

5 A It was a baseball cap.

6 Q Do you recall what kind of hat it was?

7 A No, I cannot recall because the stuff I wore wasn't
8 even mine, I usually don't wear that stuff.

9 Q Okay. Could it be a red hat?

10 A Possibly.

11 Q Okay. If I showed you something, would you recognize
12 it?

13 A Possibly.

14 Q Mr. Thor, I'm sorry, I'm showing you what's been
15 marked Exhibit 133. Do you recognize this?

16 A No, I don't.

17 Q Okay. And at the time that you get rid of the hat
18 that you say you were wearing, or near then, what
19 does Phong do?

20 A I believe he tossed something too. I'm not too sure.
21 Can't recall what it was.

22 Q Was it also --

23 A It was some clothing though.

24 Q Okay. You don't recall what item of clothing?

25 A No, I don't.

1 Q It was -- something that he was wearing on the
2 outside of his -- he didn't take stuff off, take
3 something else off and put things back on, right?

4 A Yes, yes.

5 Q So was it from the upper or lower half of his body?

6 A Should be upper, I believe.

7 Q Okay. And this is -- Mr. Thor, did you and Phong get
8 rid of these things because of being scared?

9 A Yes.

10 Q All right. After -- after getting rid of the
11 clothes, any other stops?

12 A No.

13 Q Okay. And so you end up at your house, right?

14 A Correct.

15 ATTORNEY MAIER: Your Honor, before I
16 forget I would move in Exhibit 93 at this time.

17 THE COURT: Any objection?

18 ATTORNEY VISHNY: No.

19 THE COURT: 93 will be received.

20 Lights okay, Mr. Maier?

21 ATTORNEY MAIER: Yes. Please.

22 Q (BY ATTORNEY MAIER) Mr. Thor, when you arrived at
23 your house, who else was there?

24 A It was just the three of us.

25 Q So it's you and Phong and Paul?

1 A Yes, correct.

2 Q And where did you go?

3 A We just went in my room and they just called for a

4 ride.

5 Q Where is your room in your house?

6 A The basement.

7 Q Phong and Paul called for a ride?

8 A Yes.

9 Q Who else came to your house?

10 A Later on -- later in the evening, a couple hours

11 later, Chong did.

12 Q Who was with Chong if anyone?

13 A Just himself.

14 Q And this is sometime later?

15 A Yes.

16 Q What happened when Chong arrived at your house?

17 A He told me he wanted me to go look at a car with him

18 in Chicago the next day.

19 Q What else did he talk about?

20 A Not too much at my house. I just asked him why. He

21 said he needed a new car and he wanted me to go

22 check out the body because I'm a student for auto

23 body tech so --

24 Q What did he say about Luna Lounge?

25 A He said he did it.

1 Q That he did what?

2 A He did the shooting at Luna Lounge.

3 Q Those are the words that he said?

4 A Correct.

5 Q Where were you when he said this to you?

6 A This was on the way to Chicago. It start to blizzard
7 kind of so we stopped in Milwaukee.

8 Q Where did you stop in Milwaukee?

9 A The Hilton hotel.

10 Q And you said that the defendant wanted you to look at
11 a car in Chicago the next day. How long after he got
12 to your house did the two of you leave to head
13 south?

14 A I believe it was three hours later because I was
15 about to fall asleep already and all of a sudden I
16 hear the doorbell ring.

17 Q What car are you in?

18 A I believe his mother's green car.

19 Q What kind of -- what kind of car is the green car?

20 A Toyota.

21 Q And it's a car, SUV, truck?

22 A It's more of a luxury car.

23 Q Four doors?

24 A Two-door.

25 Q Two-door.

1 Mr. Thor, you said that you were starting to
2 fall asleep and you heard a knock or heard the
3 doorbell, correct?

4 A Correct.

5 Q When you answered it, Chong was there?

6 A Yes.

7 Q Do you have any idea how he got to your house?

8 A No, I asked him, he said he just got dropped off.

9 Q What was your address at that time?

10 A 1745 North Harriman Street.

11 Q Mr. Thor, I'm showing you what has been marked as
12 Exhibit 72. Do you see that?

13 A Yes, I see that.

14 Q Do you recognize what this is, sir? Sorry. Let me
15 stop wiggling it around.

16 A It looks like a map.

17 Q Are you able to see the area of downtown Appleton
18 that would have included where Luna Lounge was?

19 A Yes, I do.

20 Q And that's the corner of College and Division,
21 right?

22 A Correct.

23 Q And are you able to see where your house was at the
24 time up on Harriman Street?

25 A Can you reask that question, simpler terms?

1 Q Sure. Within -- on the map are you able to also see
2 where your house is located at the time?

3 A Yes, yes.

4 Q And can you point out where that house was?

5 A Right here, I believe.

6 Q You pointed at the top of the map right near the
7 label that actually says 1745 North Harriman,
8 right?

9 A Correct. Because I think that's where it should be.

10 Q Okay. That's the address that you said you lived
11 at?

12 A Yes.

13 Q Did you know the people who lived next to you to the
14 south?

15 A Not too well. But they've been long time
16 neighbors.

17 Q Chong had been to your house before?

18 A Yes.

19 Q Including after dark?

20 A What do you mean by that?

21 Q Had he been there at night before?

22 A Yes, plenty times.

23 Q When you left your house with Chong to head, you
24 think, to Chicago to look at this car the next day,
25 how did you get to the -- how did you get there, did

1 you leave on foot and walk somewhere, did you drive
2 right away?

3 A He left to go get his vehicle and then he came back
4 and picked me up because he asked if I was willing to
5 go with him.

6 Q So he -- he left on foot?

7 A I cannot recall. I just told him to come back and
8 get me then.

9 Q Okay. Did that happen?

10 A Yes, it did.

11 Q Do you know what time it was when you got to the
12 hotel in Milwaukee?

13 A No, I can't recall that.

14 Q Was it light yet?

15 A No. It was close. It was snowing all night too
16 so -- but there was no light when we arrived.

17 Q There was no light?

18 A It was still dark.

19 Q Okay. So what did you do when you arrived at the
20 hotel?

21 A Just laid down and slept.

22 Q All right. On the way down is when you say that the
23 defendant told you that he did it, meaning shot this
24 person at Luna?

25 A Yes, correct.

1 Q Did the defendant say anything about the gun that
2 would have been involved in shooting someone?

3 A No, he did not.

4 Q Did you ask him anything about --

5 A No. I just kind of made a statement, whatever,
6 you're stupid, and then just kind of just dozed
7 off.

8 Q So after -- and as far as you know, the defendant
9 sleeps also at the hotel, right?

10 A Yes.

11 Q What time of day was it when you woke up there?

12 A I can't recall. He kind of woke me up.

13 Q Okay. What happened then?

14 A He just said let's go eat and hang out with some of
15 my relatives and watch football game or something.

16 Q Where did you eat?

17 A We just ate at the -- my relative's house.

18 Q And then you went to this place to watch a football
19 game?

20 A Yes, correct.

21 Q Did you know those people?

22 A Yes, I do.

23 Q Okay. So you -- you know the person who goes by Q?

24 A Yes, I do.

25 Q You know Peter Moua?

1 A Yes, I do.

2 Q And someone who goes by Jesus?

3 A Yes, I do.

4 Q And then someone who goes by Joseph?

5 A Yes, I do.

6 Q And then a person named Dia?

7 A Yes, I do.

8 Q And then someone named Xai Thao?

9 A Yes, I do.

10 Q How long have you known those people?

11 A Forever too, I know them forever too.

12 Q Okay. So you're at this -- at Q's house watching

13 football. Does anything related -- anybody say

14 anything about Luna Lounge while you're at Q's

15 house?

16 A Not that I can recall. I was just drinking some

17 beers with them, just smoking, we didn't talk much

18 about that.

19 Q Okay. Where did you stay that night?

20 A I believe I stayed at Peter Moua's.

21 Q So you -- you left Q's house and ended up at Peter

22 Moua's house?

23 A Correct.

24 Q Where did the defendant stay, if you know?

25 A I brought him along with me because he didn't have a

1 place to stay.

2 Q What happens when you wake up the next morning?

3 A We woke up and we stopped by, I believe, some
4 restaurant, picked up some food and just came back
5 home.

6 Q What kind of food was it, do you recall?

7 A I believe it was JJ Fish. That's the name of the
8 restaurant. It was some fried chicken gizzards and
9 all that.

10 Q And it was in what city?

11 A I believe Milwaukee.

12 Q Okay. Are you familiar with Milwaukee streets?

13 A No, I'm not too familiar --

14 Q Okay.

15 A -- with their streets over there.

16 Q Okay. And then after JJ Fish you said you came
17 back?

18 A Yes.

19 Q And where is the defendant when you leave and go to
20 JJ Fish?

21 A He was with me, he was driving, he actually was the
22 one who went in, I just sat in the car.

23 Q Okay. Same car as the day before?

24 A Yes, correct.

25 Q And same car that you drove down from Appleton in?

1 A Yes, correct.

2 Q And then did -- did the defendant drive back up to
3 Appleton?

4 A Yes, correct.

5 Q On the way back -- and I -- I'll say on the way back,
6 I'll include from Peter Moua's house all the way to
7 Appleton, so even though it's kind of in two chunks,
8 what did the defendant say about the shooting at Luna
9 to you?

10 A He didn't say much. We were just listening to music
11 mostly on the ride back.

12 Q Did the defendant ever tell you what happened with
13 the gun?

14 A No, he did not.

15 Q Now, we've talked about -- I guess we kind of
16 referenced one time that you talked to the police
17 right after you guys got back up then, right?

18 A Yes.

19 Q You talked to them on the 10th in the afternoon,
20 right?

21 A Correct.

22 Q And then you talked to them a number of other times
23 as well, right?

24 A Correct.

25 Q Did you ever tell the police that Chong told you what

1 he did with the gun?

2 A Yes, I did.

3 Q Was that based on what he actually told you?

4 A No, no, I was just saying that. I don't know, I just
5 didn't want to be involved with the situation so --

6 Q And that's -- that sort of remains the case, right,
7 you don't want to be involved in this?

8 A Yes.

9 Q This is someone -- it's an incident that involves
10 some people you've known for a long time, right?

11 A Correct.

12 Q You care about them?

13 A Yes, I do.

14 Q Just a couple more questions, Mr. Thor.

15 When -- when we started talking about that
16 night, you went in a group from City Limits in
17 Menasha to Sharks pool hall, right?

18 A Correct.

19 Q Did you go back to Sharks that night at all?

20 A No, I did not.

21 Q Did you go -- when was the next time you went to
22 Sharks?

23 A I never went back to Sharks.

24 Q Did you tell anybody to go to Sharks?

25 A No, I did not tell nobody to go there.

1 Q From the time that this happened -- and actually I
2 guess I need to change it a little bit.

3 From the time that the defendant gets to your
4 house, sometime in the middle of the night on
5 December 8th, until you talked with the police on
6 December 10th, did you talk to Paul at all?

7 A No, I have not.

8 Q Did you talk to Phong at all?

9 A No, I have not.

10 Q And then after talking with the detectives on
11 December 10th in the afternoon, did you talk with
12 Paul at all?

13 A No, I did not.

14 Q Did you talk to Phong at all?

15 A No, I did not.

16 ATTORNEY VISHNY: I'm sorry. I -- from the
17 10th to the 12th you're asking? First you said for
18 the first time you talked to the police and then I
19 didn't hear the question.

20 ATTORNEY MAIER: It was open-ended.

21 ATTORNEY VISHNY: Okay.

22 Q (BY ATTORNEY MAIER) And you had come back on Monday
23 the 9th, right?

24 A That's correct.

25 Q Do you know someone named Lisa Stutzman?

1 A Yes, I do.

2 Q How well or how do you know her?

3 A I known her since we were like kids too almost so...

4 Q Okay. Who is she?

5 A She is Hu's -- was his wife.

6 Q Hu is the defendant's brother, right?

7 A Correct.

8 Q And they have children together, right?

9 A Correct.

10 Q Mr. Thor, I'm going to take you back to the moment --

11 basically the moment before the shooting inside Luna

12 Lounge that night. Okay?

13 A Okay.

14 Q And as you're standing there and you say you've got

15 your hands up, you're thinking you're going to get

16 hit, you're looking at Mr. Richards when you see the

17 flash. Do you see anything before the flash?

18 A No, I do not.

19 Q Do you see anything happen to him when you see the

20 flash and hear the bang?

21 A What do you mean by that?

22 Q Besides him dropping, do you see any -- any reaction

23 or any effect on him?

24 A Just seemed like he passed out. He just kind of fell

25 straight to the ground.

1 Q Mr. Thor, you talked a couple times to Sergeant Rabas
2 who is seated to my right, correct?

3 A Correct.

4 Q And you told him a couple different things about that
5 -- that instant right before and right after the
6 shooting, right?

7 A I can't recall, but I believe so.

8 Q You -- you told me that you -- I'm sorry. You told
9 Sergeant Rabas that you saw a sleeve go up just
10 before the -- the -- what turned out to be a shot was
11 fired, right?

12 A Yes, correct.

13 Q And that was a sleeve that had -- what do you recall
14 about that?

15 A I just kind of put Chong's appearance out there
16 because at first they came and told me it was Paul,
17 and then second time around they said it was Chong,
18 so, I don't know, I just kind of give them an
19 appearance of what Chong was wearing because I seen
20 pictures of what Chong was wearing before that.

21 Q You told them that you thought it was a .22 that had
22 been shot, correct?

23 A I believe so. I'm not too sure.

24 Q You shot guns before?

25 A No, I have not. Just a cap gun if anything.

1 Q When you talked with the police, you also told them
2 something about what the defendant did with the gun
3 after the shooting, right?

4 A Yes, correct.

5 Q And you told the police that he -- the defendant told
6 you that he had flushed the gun in a bar downtown,
7 right?

8 A Correct.

9 ATTORNEY MAIER: That's all the questions I
10 have for you, Mr. Thor. Thank you.

11 THE COURT: Any cross?

12 ATTORNEY VISHNY: Yes, I do, but could we
13 have five minutes? I -- just I need to use the
14 restroom.

15 THE COURT: That's fine.

16 Please rise.

17 (The jury was escorted out of the
18 courtroom.)

19 THE COURT: All right. You may be seated.
20 We'll resume at approximately 10:25.

21 (Court in recess.)

22 THE COURT: All right. We'll bring in the
23 jury.

24 (The jury was escorted into the courtroom.)

25 THE COURT: Please be seated.

1 Mr. Thor, come on up. And you are still under
2 oath, sir, so I won't reswear you in.

3 THE WITNESS: Okay.

4 THE COURT: Please be seated.

5 And then, whenever we're ready,
6 cross-examination may begin.

7 **EXAMINATION OF JOE THOR**

8 **BY ATTORNEY VISHNY:**

9 Q Mr. Thor, right after you heard a gunshot, you ran
10 out of Luna, right?

11 A Correct.

12 Q Now, you drew a diagram for the police, and I'm going
13 to put it on back up here if I can figure out how to
14 use this.

15 THE COURT: Do you want the lights down
16 then, counsel?

17 ATTORNEY VISHNY: Well let me figure out
18 how to do this first. I don't know, because if the
19 jurors can see it then, you know, it's just so hard
20 on us with the lights, so let's just see.

21 THE COURT: Let me check with -- how is the
22 jury if we leave -- and maybe we'll pull it up.

23 ATTORNEY VISHNY: It's not on yet.

24 THE COURT: Let me see what it looks like
25 and then we'll tell you.

1 ATTORNEY VISHNY: No, it's not visible.

2 Oh, it is up now.

3 THE COURT: It's up?

4 ATTORNEY VISHNY: It's up now. It's not
5 visible. It's starting to get brighter, starting to
6 get brighter.

7 THE COURT: Should we go with the lights
8 down?

9 UNIDENTIFIED JUROR: Yes, put the lights
10 down please.

11 ATTORNEY VISHNY: All right.

12 Q (BY ATTORNEY VISHNY) So this is a diagram that was
13 made when you talked to the police on December either
14 9th or 10th, right?

15 A I believe the 10th, correct.

16 Q And that was because you met the police over at the
17 courthouse here and then you walked over to the
18 police department with them?

19 A Correct.

20 Q And it's not because you went to the police and told
21 them you knew things.

22 A Correct.

23 Q In fact, you had already talked to police officers
24 about this case once before?

25 A Correct.

1 Q You had been at Lisa Stutzman's house, as soon as you
2 got back from Milwaukee you went over to
3 Lisa Stutzman's, right?

4 A Correct.

5 Q And she's the person who you described as Hu Lee's
6 former wife?

7 A Correct.

8 Q They're not together anymore?

9 A No, after this situation, no.

10 Q And in fact she has a new boyfriend now named Tom
11 Lee?

12 A Correct.

13 Q And she is not -- never mind. Strike that.

14 All right. So when the police came over to
15 Lisa Stutzman's house and questioned you the first
16 time, what you told them is that you weren't in
17 Luna.

18 A Correct.

19 Q Or maybe that you had been there -- which one did you
20 tell them, that you had been there but left before
21 the gunshot or that you'd never been there at all?

22 A I told them I wasn't there at all.

23 Q And you stuck with that story only for a few minutes
24 because it wasn't working, right?

25 A Correct.

1 Q It wasn't working because they told you they had
2 pictures of you inside Luna?

3 A They showed me pictures.

4 Q And they showed you pictures and they told you that
5 they had some belief you were involved in this?

6 A Correct.

7 Q And that you could be accused as party to the crime
8 or as part of this shooting?

9 A Correct.

10 Q That was pretty scary for you, right?

11 A Correct.

12 Q Because at various times they told you if you were
13 party to a crime you could potentially get life.

14 A Correct.

15 Q And that's not something that you wanted to do.

16 A Correct.

17 Q And you knew that you had run out of Luna after this
18 shooting and ditched your red hat?

19 A Correct.

20 Q So apparently you recall it was a red hat?

21 A I believe it was white, actually, but I can't recall,
22 so I'm just saying yeah.

23 Q And this is Exhibit No. 133, right?

24 A Correct.

25 Q This is the hat that police got near the trash can?

1 A I believe so, but I don't think it was red, I thought
2 it was white actually but --

3 Q Okay. And your buddy Phong Lee, he's still your
4 friend, right?

5 A Correct.

6 Q And Paul Lee is still your friend, right?

7 A Correct.

8 Q They -- Paul Lee didn't throw any clothing out but
9 Phong Lee did, right?

10 A Correct.

11 Q And I'm showing you what's been marked as No. 104.
12 This is what Phong Lee threw out, this white vest?

13 A Yes, if -- if it's a vest, I believe so.

14 Q Okay. Because he was wearing a white vest with a
15 plaid shirt underneath it that night?

16 A Yes, I believe so.

17 Q He had a hat on too.

18 A Yes, I believe so.

19 Q He threw that out too?

20 A I can't recall.

21 Q All right. So as I understand this, you still --
22 although it's not to scale, it's still your testimony
23 today that this map is accurate.

24 A Yes, correct.

25 Q All right. And so here is the door to Luna, right?

1 A Correct.

2 Q And here is the guy who was shot?

3 A Correct.

4 Q Joshua Richards, right? So he's kind of right
5 between.

6 You walk in Luna, there is a first foyer and
7 then there's kind of a second foyer?

8 A Correct.

9 Q And he is standing right between them at the time
10 he's shot?

11 A Correct.

12 Q And then Paul is right over here, right?

13 A Correct.

14 Q Paul punches him, according to what you said?

15 A Correct.

16 Q Paul's right handed.

17 A Yes, correct.

18 Q And he punches Josh to the left side of Josh's face.

19 A I believe so.

20 Q And that's what you told the police?

21 A Yes.

22 Q Then what you claim is that as Paul is punching them,
23 you and Phong are stepping back along this wall,
24 right?

25 A Correct, but Paul jumped back and kind of pinned us

1 to the wall.

2 Q So in other words Paul fights him and gets in a
3 position where the three of you are going to be
4 cornered now by this guy and his buddies who are over
5 here.

6 A Yes.

7 Q So he's in a fight and he puts himself in a position
8 to put you -- be cornered, and not only -- right, or
9 you already -- you already really answered that. So
10 his buddies, like him, they were taller too.

11 A Correct.

12 Q So now it's you three short guys over here and
13 these -- potentially Mr. Richards and his buddies, at
14 least two who are taller, males, and you guys are
15 cornered.

16 A Correct.

17 Q And when he falls, he falls right in front of you,
18 right?

19 A Not exactly in front of me, but like, yeah.

20 ATTORNEY MAIER: If I could interrupt. He
21 made a gesture. I just want to note for the record.

22 Q (BY ATTORNEY VISHNY) Can you show us what you did
23 again?

24 A It was kind of an angle like not too far.

25 Q Kind of an angle? His body was at an angle to you?

1 A Yeah.

2 Q You had to step over his body to get out of there?

3 A No. Actually, I just went right around.

4 Q You went right around him?

5 A Yeah.

6 Q Okay. So you're at the wall, he falls at an angle.

7 By angle, do you see how I'm drawing this on a

8 diagonal, is that what you mean?

9 A No, he like just fell forward.

10 Q He fell forward?

11 A But when I was looking I was at an angle.

12 Q Okay. So were you -- you're saying you were able to

13 go kind of around him, is that what --

14 A Yeah, yeah, just like right there.

15 Q Okay. So -- so you go from here around him to the --

16 A No, no, no, like -- are those arrows on there?

17 Q Are these arrows?

18 A That line by my name, follow that, that line straight

19 out.

20 Q So that's how you do it, right?

21 A Yes.

22 Q You go with this arrow right here is you going out,

23 right?

24 A Yes, correct.

25 Q And then you have this arrow right here. Is that

1 Phong or Paul running out, according to you?

2 A I believe both of them.

3 Q You believe both of them it refers to?

4 A Yes, correct.

5 Q But you're still kind of cornered back there before
6 you run out, according to this, right, and that's --

7 A Correct.

8 Q All right. And you're the first person out the door,
9 right --

10 A Correct.

11 Q -- in the whole thing.

12 A Yes, correct.

13 ATTORNEY VISHNY: We can turn the lights
14 back on, Judge.

15 THE COURT: Okay.

16 ATTORNEY VISHNY: Can the jurors see these
17 pictures? Okay.

18 Q (BY ATTORNEY VISHNY) Mr. Thor -- and you can come
19 off the witness stand if you can't see this well
20 enough. All right?

21 A Okay.

22 Q This is kind of still shots that are taken from the
23 bar video, just to orient you to what they are. All
24 right? So you can see people turning around,
25 right?

1 A Correct.

2 Q And this is you, right?

3 A Correct.

4 Q And you're the very -- do you see this is also you --

5 let me -- let me rephrase those to use the numbers.

6 I'm going to show you what's marked as 33G on Exhibit

7 33. This is you going right out, correct?

8 A Correct.

9 Q All right. And then you're almost at the door and

10 then this is you very first at the door, correct?

11 A Yes, correct.

12 Q This woman right here, do you know who that is?

13 A No, I do not.

14 Q All right. So this woman right here, she's kind of

15 in between you, you had your hat on backwards it

16 looked like?

17 A Yes.

18 Q And then that's Paul Lee?

19 A Correct.

20 Q Then we have -- and that's -- all right. So the

21 woman here, first of all, this was 33H, you're right

22 there pushing towards the door first?

23 A Yes.

24 Q And you don't know the woman in 33H, right?

25 A Well, if it's --

1 Q Do you know who Dalinda Guzman is?

2 A Yes, I do.

3 Q Okay. So ignore what's written here. Do you
4 independently of your own memory know if this is
5 Dalinda Guzman?

6 A I believe that is not.

7 Q Okay. You think it's someone else?

8 A Yes.

9 Q So right here behind this woman -- and you think it's
10 not because Dalinda Guzman doesn't have blonde hair,
11 right?

12 A Yeah. I think she has darker hair.

13 Q You have to say it really loud. If you don't want to
14 use the microphone, you have to feel like you're
15 shouting.

16 A Sorry.

17 Q Think about your voice reaching all the way back to
18 the back of the room.

19 A Yes, I believe that's not her because that's not her
20 hair color.

21 Q This person is from the back, you can't see them,
22 right?

23 A Correct.

24 Q All right. And -- well, actually, your hat is white
25 in this picture. Is that why you think your hat --

1 A Yes, correct, because I thought it was white.

2 Q Do you think that because of the picture or because
3 that's your memory?

4 A My memory.

5 Q All right. And what about your coat here, you've got
6 kind of a big puffy coat on. Do you remember what
7 coat you wore that night?

8 A Yes.

9 Q What color was it?

10 A It was white.

11 Q It was a white coat.

12 Okay. And then you see Paul Lee right here, and
13 all -- we're pointing to -- all these last series of
14 questions have been 33I. We're pointing at Paul Lee
15 right here, correct?

16 A Correct.

17 Q And he's got on what looks like to be a white coat
18 here?

19 A Correct.

20 Q But the coat wasn't actually white, it was black and
21 white?

22 A Yes, I believe so, because I don't think it was all
23 white.

24 Q Okay. And so he's the very next guy right behind
25 you?

1 A Yes, correct.

2 Q And then moving over to 33I and then 33K you see
3 another person right behind Paul there.

4 A Yes, correct.

5 Q And that person is Phong Lee?

6 A Correct.

7 Q And then it's the -- over to 33L you can see the
8 three of you going out the door, correct?

9 A Correct.

10 Q And this woman here now who is turned to the side,
11 can you see her face at all?

12 A Yes, I can.

13 Q Does that look like Dalinda to you?

14 A Yes, it does.

15 Q All right. All right. I'm showing you what's been
16 marked as Exhibit No. 105. This is actually Paul's
17 coat, right, that he had on that night?

18 A I do not believe so.

19 Q Okay. So you don't think it's what he wore that
20 night?

21 A No.

22 Q You believe he wore a different coat that night?

23 A Yes.

24 Q All right. Now, you run away and the first thing you
25 guys do is find a garbage can to ditch your

1 clothes?

2 A Correct.

3 Q Was the garbage can on the way to your house?

4 A Correct.

5 Q And so you toss your hat, Phong tosses his jacket
6 because you say you're scared?

7 A Yes, correct.

8 Q Oh. So what are you scared of?

9 A Because I believe I thought we were getting shot
10 at.

11 Q Okay. So you think that you're being shot at, not
12 that Joshua Richards is being shot at.

13 A Yes.

14 Q And in fact, when the police questioned you at first,
15 that's what you told them, you said, well, we're
16 being shot at, I'm afraid, right?

17 A Correct.

18 Q But that wasn't true, you were scared that the police
19 were going to catch you, right?

20 A No.

21 Q So you weren't afraid at all the police are going to
22 get you and say that you're involved in this at the
23 bar, you never felt that way?

24 A Actually, yes, I did.

25 Q You did feel that way, didn't you?

1 A A little bit.

2 Q A little bit? More than a little bit?

3 A Yes.

4 Q A lot.

5 A Yes.

6 Q And you're afraid the police are going to catch you

7 so you toss your stuff so you won't be recognized,

8 right?

9 A That's correct.

10 Q And then you go to your house, right?

11 A That's correct.

12 Q And Paul and Phong come over there, right?

13 A Correct.

14 Q They get a ride -- they call someone named Letty as

15 far as you know who gives them a ride?

16 A Correct.

17 Q And Chong never says anything to them over at your

18 house because he's not there at the same time.

19 A Correct.

20 Q They both leave before Chong gets to your house?

21 A Correct.

22 Q And then you say Chong comes over, he's wearing a

23 dark colored coat, right?

24 A Correct.

25 Q And he had on a dark colored coat in the bar? Do you

1 remember one way or the other?

2 A Yes, correct.

3 Q And was it like gray almost black?

4 A Correct.

5 ATTORNEY MAIER: I'm going to just ask for
6 clarification about which one we're talking about,
7 which time period.

8 Q (BY ATTORNEY VISHNY) In the bar, Chong comes over,
9 he's wearing a gray almost black coat as far as you
10 know?

11 A Correct.

12 Q And he's wearing the same coat when he comes to your
13 house?

14 A Correct.

15 Q Is he wearing the same coat when you go check in at
16 the hotel or a different one?

17 A I can't recall that.

18 Q Okay. But certainly nobody would mistake what he was
19 wearing for a white coat?

20 A Correct.

21 Q And nobody would mistake it for being a white vest.

22 A Correct.

23 Q So you ditch your stuff, you're afraid the police are
24 going to come get you, and then they do, they come
25 over to Lisa Stutzman's house, right?

1 A Correct.

2 Q And by the time they come over, this all happened at
3 December 8th just before two in the morning, that's
4 when the shooting happens.

5 A Correct, I believe so.

6 Q But you -- the police don't manage to catch up with
7 you to talk to you until the afternoon or evening on
8 December 9th?

9 A Correct.

10 Q That's on a Monday.

11 A Correct.

12 Q And when they talk to you on a Monday, first you lie,
13 then they tell you you're in a heck of a lot of
14 trouble, you could be charged with this crime,
15 correct?

16 A Correct.

17 Q And what you tell them is you'll talk to them
18 tomorrow.

19 A Correct.

20 Q So you've got some more thinking, some more talking
21 time.

22 A Correct.

23 Q Now, you're over at Lisa who is Hu's brother's house,
24 right?

25 A Correct.

1 Q And you know that Paul goes over there sometimes.

2 A Correct.

3 Q And you know that Phong goes over there sometimes.

4 A Correct.

5 Q And you're claiming that you've never talked to Paul
6 or Phong since they left your house on the 8th?

7 A Yes. Because I was with Chong only until the 10th.

8 Q No phone calls?

9 A No phone calls.

10 Q No texting?

11 A No.

12 Q Well you weren't with Chong anymore when you got to
13 Lisa's, right?

14 A Yeah. That was the day we got back.

15 Q All right. And you weren't with Chong that night on
16 December 9th after leaving Lisa's house, you went
17 home.

18 A Correct.

19 Q And you weren't with Chong on December 10th before
20 you talked to the police?

21 A Correct.

22 Q So you had opportunities certainly all the way until
23 the police talked to you to talk to Phong and Paul.

24 A Correct.

25 Q So what you're saying is you witnessed this traumatic

1 shooting so much that you're scared for your life and
2 scared that you're going to get shot, and you claim
3 you've never talked to them between the time that you
4 came back from Milwaukee and the time the police
5 talked to you at Lisa's, right?

6 A Correct.

7 Q And you know the police are there accusing you of
8 being party to a crime of potentially looking at
9 life.

10 A Correct.

11 Q You know it's pretty serious, right?

12 A Correct.

13 Q And you know that you ran out of that bar with Paul
14 and Phong.

15 A Correct.

16 Q You know that Paul and Phong are with you when you
17 toss the clothing.

18 A Correct.

19 Q You know that Paul and Phong came to your house.

20 A Correct.

21 Q And you're going to tell this jury that knowing the
22 police are coming and that they have pictures from
23 the bar of the three of you walking out together,
24 that you never contact Paul or Phong to warn them
25 that the police might come talk to them?

1 A Why would I warn them?

2 Q You ask -- you tell me. These are your buddies,
3 right?

4 A Yes, correct.

5 Q And you don't want to tell them at all the police are
6 coming to talk to you.

7 A No. Why would I know that? Maybe they already been
8 talked to. How do I know?

9 Q Well, you don't want to then find out what they told
10 the police before the police come and talk to you on
11 December 10th?

12 A Can you repeat that question?

13 Q Yeah. So you don't want to find out from them --
14 you're saying maybe the police had already talked to
15 them, so you're not interested in finding out if the
16 police had talked to them or what they said? You
17 don't want to know that?

18 A I would like to but maybe it's better off not to
19 know.

20 Q So that's what you say, you didn't really want to
21 know, right?

22 A Yes, correct.

23 Q Okay. And so the police come and talk to you on the
24 10th and they're basically telling you they believe
25 that Paul is the shooter.

1 A Correct.

2 Q And at that time they really press you on that,
3 right?

4 A Yes, correct.

5 Q And you tell them -- they tell you that they believe
6 that Paul had something in his hand that's a gun.

7 A Correct.

8 Q You tell them that you can't say a hundred percent
9 that it's not Paul.

10 A Correct.

11 Q You tell them you know you didn't do it, right, tell
12 that to the police?

13 A Yes.

14 Q You know Phong didn't do it, you tell that to the
15 police, right?

16 A Correct.

17 Q But based on how the police are questioning you, you
18 say, well, you know, I don't think it's Paul but it
19 could have been him.

20 A Well what they said is there a possibility because
21 he's the only one who punched him or got close
22 enough.

23 Q And you say, yeah, there's a possibility?

24 A Yes, correct.

25 Q And you say I couldn't say a hundred percent it

1 wasn't Paul.

2 A Yes, correct.

3 Q Now, during that time when you're being questioned --
4 by the way, when you ran out of Luna, you're the
5 fastest runner of the group, right?

6 A Yes.

7 Q Is that because you run regularly or, you know --

8 A I'm athletic, play sports, been on sports teams.

9 Q And you know that the way to run the fastest is to
10 use your arms when you're running, right?

11 A Correct.

12 Q And if you put arms in your pockets it will restrain
13 you while you're running?

14 A Correct.

15 Q So when you want to hightail it somewhere, it's best
16 to run swinging your arms, it gives you more
17 momentum?

18 A Correct.

19 Q And there's no reason to put your hands in your
20 pockets -- well, let me just say this. It was a very
21 cold night out, right?

22 A Correct.

23 Q And it's fair to saying that running kept you warm?

24 A Correct.

25 Q Because when you run your body heats up?

1 A Correct.

2 Q So when the -- when you tell the police -- by the
3 way, the officer's name, do you remember the name
4 Schira talking to you?

5 A Yes, correct.

6 Q Okay. So when Sergeant Schira comes and talk to you
7 and you tell him you've taken off your vest -- Phong
8 took off his vest and you got rid of the hat, you say
9 you're scared and you're even more scared because you
10 heard a rumor that it's an Asian person who did the
11 shooting, right? That's even scarier to you?

12 A I did not hear that.

13 Q Okay. So I'm going to show you what's been marked as
14 Exhibit 160. Okay. I'm going to show you what's a
15 transcript of the first time you talked to the
16 police. Okay?

17 A Okay.

18 Q Now, in order to prepare for court, you saw a police
19 summary of what you said, right?

20 A Correct.

21 Q But you didn't actually listen to the recording or
22 read a transcript of it.

23 A No.

24 Q I'm going to direct your attention now to Line 39.

25 Detective Schira: You strip off your -- you get

1 rid of your hat by the dumpsters, Phong takes off his
2 vest, gets rid of it, but who was coming after you.

3 Joe. This is you. I don't know. That's the
4 main thing. That's why I was wondering. And then as
5 soon as like the next two days I heard it was an
6 Asian person I'm like even more scared.

7 Right? That's what you said, isn't it?

8 A No, incorrect.

9 Q So you don't agree that that's what you said, you
10 don't agree with the transcript?

11 A Correct.

12 Q Okay.

13 ATTORNEY VISHNY: Judge, I move in Exhibit
14 160.

15 THE COURT: Any objection?

16 ATTORNEY VISHNY: I mean to the extent it's
17 been read in court.

18 ATTORNEY MAIER: No.

19 THE COURT: To that extent, 160 will be
20 received.

21 Q (BY ATTORNEY VISHNY) Now, this -- when -- when the
22 police are talking to you at this point, it's
23 Detective Schira and Detective Rabas who's present in
24 court here?

25 A Correct.

1 Q His name is sergeant, but I have a habit of calling
2 him detective because that's kind of the
3 investigator.

4 They tell you - if you don't remember, let me
5 know - that they have a dude with a gun in his hand,
6 right?

7 A Yes, correct.

8 Q And they have to make a decision whether you're going
9 to be party to the crime or try and hide the truth --

10 A Correct.

11 Q -- in the investigation.

12 And do they tell you that they met with the DA's
13 office and they want to give you another opportunity
14 because you had lied the day before?

15 A That's correct.

16 Q And this was your chance, right?

17 A Correct.

18 Q And they make it -- they talk to you about having the
19 rest of your life in front of you?

20 A Correct.

21 Q They talk about -- let me ask this. Do you remember
22 the exact words they said?

23 A Not by -- off of my head.

24 Q Okay. 55, Lines 12 to 23. It starts with the word
25 okay. Sergeant Rabas. All right. I'm going to show

1 you the previously discussed transcript. Page 55,
2 Line 12. I'm going to ask you to read from Line 23
3 what Sergeant Rabas said.

4 A (Witness complying.)

5 Q Does that remind you of what he told you or should I
6 read it?

7 A You can read it.

8 Q Okay. You can either be a witness or you can be
9 party to the crime or part of it. Okay? And I'll
10 tell you what. After somebody shoots someone, you
11 run off with that person, okay, you help either cover
12 up his story of what took place or provide
13 transportation --

14 And then the other sergeant, Schira, says:
15 Takes him to his house.

16 Rabas: Takes him to his house, he goes into
17 your house, you dig yourself a very deep, deep hole.

18 Schira: It's called party to a crime.

19 Rabas: Party to the crime. And after the fact,
20 you were there, this guy got shot now.

21 Joe: If he did it, he would have told me but he
22 didn't --

23 Joe, Joe, says Rabas.

24 You say: -- tell me that so I believe he didn't
25 do it.

1 Schira: Well, this is where I think you're not
2 being truthful.

3 You say yes, you are.

4 Then they take -- tell you to look at a picture,
5 right?

6 A That's correct.

7 Q And ask if you remember what's in the hand and then
8 what you tell them is it looks like a beer bottle --

9 A That's correct.

10 Q -- to you. That's your opinion of what's in his
11 right hand, correct?

12 A Correct.

13 Q And so, you know, you think these guys are pretty
14 serious when you talk to them, right?

15 A Yes, correct.

16 Q So clearly you believe if somebody came to your house
17 and said that they had committed a murder that the
18 fact that you have this knowledge means you could be
19 a party to the crime?

20 A Yes, they were saying that, yes.

21 Q They were saying it and you believed it, right?

22 A They were just really pressuring me, too, so I didn't
23 really know what to do.

24 Q Right. But you didn't think they were lying to you,
25 that you could be prosecuted for it, did you?

1 A I did.

2 Q You did think they were lying?

3 A No, I believed.

4 Q You believed it, right?

5 A Yes.

6 Q And many times when they talk to you, they would
7 remind you of that, that if you didn't tell them what
8 you thought was what they wanted to hear, that you
9 would be in trouble, right?

10 A Correct.

11 Q And that continues to today, right, you're worried
12 about being in trouble?

13 A Correct.

14 Q And do you remember them saying how do you think all
15 this stuff is going to affect you for the rest of
16 your life? Think about going down for 25 to --

17 A Correct.

18 Q 25 to what?

19 A To life.

20 Q And being told, you know, it's not summer camp, this
21 happens, you go to big boy prison?

22 A Yes, correct.

23 Q And them telling you you're going to go to court and
24 testify?

25 A Correct.

1 Q So you know that they want Paul at that point and you
2 give them Paul, right?

3 A I do not give them Paul. I didn't give them. Well,
4 repeat that question.

5 ATTORNEY VISHNY: The court reporter can
6 repeat it.

7 (Question read back.)

8 A I didn't give them Paul.

9 Q Well, you made it very clear it wasn't you or Phong,
10 right?

11 A Well it wasn't Paul either because he pinned us to
12 the wall, his hands were open -- wide open right up
13 because he had Paul pinned -- or Phong pinned to the
14 right side of him.

15 Q Okay. But when the police are telling you it could
16 be Paul, you're saying it -- you're agreeing it's
17 possible.

18 A Anything is possible.

19 Q I'm asking you what you told the police.

20 A Yes, correct.

21 Q Not in general.

22 A That's correct.

23 Q All right. And they tell you that you've got two
24 choices, you can get on the witness line and be a
25 witness, you can be a suspect, right?

1 A Correct.

2 Q And that you need to know which line you're going to
3 be on, correct?

4 A Correct.

5 Q Now, a few days later on December 12th -- so on that
6 day you're saying here today in court you already
7 knew that Chong told you he did it, right?

8 A That's correct.

9 Q By the way, Chong is a terrific liar sometimes,
10 correct?

11 A Yes, correct.

12 Q He brags about stuff he has that he doesn't really
13 have?

14 A Yes, correct.

15 Q Claims that people are girlfriends that aren't really
16 girlfriends?

17 A Yes.

18 Q Claims to have money when he doesn't really have
19 money?

20 A Correct.

21 Q Claims to have cars when he doesn't really have
22 cars?

23 A Correct.

24 Q Claims to have done things to other people when he
25 hasn't really done them?

1 A Correct.

2 Q You know, and claims to in fact have done bad things
3 when he hasn't even done them, correct?

4 A Correct.

5 Q All right. So that's Chong. There's something wrong
6 with his personality in that way.

7 A Correct.

8 Q Now on December 12th the police come and they talk to
9 you, they come up to your house and you talk to them
10 in a squad car, right?

11 A Correct.

12 Q And they also -- again they tell you you can either
13 get yourself on the witness line or be looking to 25
14 to life?

15 ATTORNEY SCHNEIDER: Objection. Asked and
16 answered.

17 ATTORNEY VISHNY: No. This is on the 12th.

18 ATTORNEY SCHNEIDER: I didn't hear a
19 different reference to a transcript number.

20 ATTORNEY VISHNY: I'm sorry. This is on
21 December 12th now.

22 A Correct.

23 Q You basically are told the same thing by the police
24 at the beginning of the interview, right?

25 A Correct.

1 ATTORNEY MAIER: Judge, can we approach?

2 THE COURT: You may.

3 (Bench conference.)

4 Q (BY ATTORNEY VISHNY) Now, I'm actually going to go
5 back to the first time that you talked to the -- the
6 long time you talked to the police on December 10th,
7 right?

8 A Okay.

9 Q Do you -- when the -- when Sergeant Schira is saying
10 you couldn't see anything, it was that quick, so it's
11 possible Paul shot him, do you remember saying that,
12 right?

13 A Yes.

14 Q And do you remember saying it's possible, you didn't
15 believe from what you saw, but he had his hands like
16 this in his pockets?

17 A No, I did not say that. I had -- I said he had his
18 hands up, spread up.

19 Q All right. I'm going back to show you this long
20 transcript again. Okay?

21 A Okay.

22 Q Sergeant Schira: You couldn't see anything, it was
23 that quick, so it's possible Paul shot. Okay?

24 And then you said: It's possible but I believe
25 he didn't. From what I saw, he did not do that. He

1 had his hands like this in his pockets.

2 Do you remember saying that?

3 A The last line, I did not say that.

4 Q You didn't say that. So that's a wrong transcript,
5 correct?

6 A Correct.

7 Q Okay. But he did have his hands in his pockets as he
8 was running out, right?

9 ATTORNEY MAIER: Object. Calls for
10 speculation.

11 A I'm not too sure.

12 Q Okay. You didn't see whether he had his hands in his
13 pockets running out?

14 A I was ahead of him so I did not see.

15 THE COURT: As rephrased, I'll allow it.

16 ATTORNEY VISHNY: Sorry. I should have
17 waited. I just went ahead to clear it up.

18 Q (BY ATTORNEY VISHNY) Now one of the things you also
19 told them was that Paul had a temper, right?

20 A Yes, correct.

21 Q And the police seemed to already know that when they
22 talked to you, right?

23 A Correct.

24 Q Now, one of the things the police wanted to do in
25 that interview was have you call Paul on the phone

1 while they recorded your conversation?

2 A Correct.

3 Q But you didn't want to do that.

4 A Correct.

5 Q Instead of saying flat out no, what you said is I'll
6 do it another time?

7 A Correct.

8 Q Now you were busy, you couldn't do it right now.

9 A Yes, correct.

10 Q That's not something you were willing to do.

11 A Correct.

12 Q You were not willing to have the police listen in to
13 what you and Paul would privately say.

14 A Correct.

15 Q All right. Now let's go to the couple of times
16 later. When the police talked to you on that day,
17 they tell you right away that Paul and Chong are in
18 jail, right?

19 A Correct.

20 Q And you already knew that.

21 A No, I didn't.

22 Q Okay. So you're saying you didn't know that Paul and
23 Chong were in jail at that point.

24 A Yes.

25 Q And now the police are telling you at first, now what

1 you say is, well I didn't see him do it. Do you
2 remember that?

3 A Yes, correct.

4 Q And then -- and the police tell you they're there to
5 help you, right?

6 A Correct.

7 Q Do you remember them telling you, Chong's in jail,
8 they don't think Paul is the shooter, and you've got
9 to help Paul get out of jail?

10 A Correct.

11 Q So now you can help your friend get out, right?

12 A Correct.

13 Q And the way you can help your friend get out is by
14 telling them that it's Chong who did it, right?

15 A Well, when they were saying that, they're like Chong
16 was the one who did it, and then they kept nodding
17 their head like this, so kind of gesture, so I don't
18 know, I just went with what they said.

19 Q So you knew what they were out after, right?

20 A Yes.

21 Q And at first you tell them you just heard rumors
22 about it, right?

23 A Yes.

24 Q And then eventually you tell them, yeah, Chong told
25 me he did it.

1 A That's correct.

2 Q And at a certain point you go inside your house
3 because the police want to see some numbers on a
4 phone?

5 A Yes, correct.

6 Q They want to look at a phone and see what numbers
7 have been called on that phone, right?

8 A Yes, correct.

9 Q And you felt they might want to see both incoming and
10 outgoing calls?

11 A Yes, correct.

12 Q And maybe text messages?

13 A Correct.

14 Q But you don't let them come in the house and see the
15 actual phone.

16 A Yes, correct.

17 Q You go in and you say I'll look at the phone and then
18 you come back out?

19 A Well, they wanted a phone number for my brother's
20 phone I believe. I forgot whose number.

21 Q But you didn't want them actually looking at any
22 phones, right?

23 A Correct.

24 Q You were afraid that a phone might really be examined
25 by the police?

1 A I didn't have a phone, I was using my brother's, so I
2 didn't feel that that would be necessary to do that
3 to his phone.

4 Q I see. So you wanted to make sure the police didn't
5 have your brother's phone.

6 A Correct.

7 Q Now, before you went in the house, that's when you
8 told the police that you didn't actually see who did
9 the shooting but you see this gray hand fire the
10 shot, right?

11 A Correct.

12 Q And, you know, they say gray hand, and then you
13 correct it, gray sleeve.

14 A Yup.

15 Q Right?

16 A Yup.

17 Q So you're saying today you just made that up because
18 you knew that's the color Chong was wearing and you
19 knew that's what the police wanted?

20 A Correct.

21 Q Now, you -- after this break you go inside, you're in
22 your house for what, like about five minutes or so?

23 A That's correct.

24 Q And then you come back out after not having the
25 police come in, right?

1 A Correct.

2 Q And when they come out they again tell you, if you
3 don't say everything you know, you could be arrested
4 for party to the crime of a first-degree murder?

5 A Correct.

6 Q And that they will be your worst nightmare, right?

7 A Correct.

8 Q And they may -- they will sure to make it your
9 project to say that you're in jail, right?

10 A Correct.

11 Q And they are continuing to tell you you're looking at
12 life in prison, right?

13 A Correct.

14 Q You're repeating you never saw the shooter's face,
15 you saw the sleeve.

16 A I just said I didn't see anything happen.

17 Q And -- but you know Chong is under arrest and that's
18 what the police want you to tell them, correct?

19 A Correct.

20 Q In fact, they tell you he's in jail and he's not
21 getting out, right?

22 A Correct.

23 Q So it's a done deal.

24 A Correct.

25 Q And again they tell you that even though Paul's in

1 jail, they don't think Paul's the shooter, right?

2 A Correct.

3 Q So they're not going to hold someone who is not the
4 shooter in jail in your mind, he's going to get out,
5 right?

6 A Well, they said for me to help out because some
7 people said Paul was the one doing it.

8 Q Okay. And do you remember saying to them, well, you
9 guys told me it was a .22?

10 A That's correct.

11 Q And then Sergeant Rabas says, we're not supposed to
12 -- forget that or --

13 A Yes.

14 Q -- we can't talk about what we've told you.

15 A That's correct.

16 Q Now, when the police are talking to you all the times
17 you're listening to them, right?

18 A Correct.

19 Q Pretty intently, right?

20 A Correct.

21 Q Thinking about what you should say when they tell you
22 things they know?

23 A Correct.

24 Q And we're back on the December 10th, Page 80, police
25 were asking you, you know, about what's in the hand,

1 if it could be a gun, and what you said, it doesn't
2 look like a gun. Come on, obviously, would a gun be
3 that small. You remember saying that?

4 A Yes, correct.

5 Q And then Schira says, yeah, it would be, it's a .25.
6 Right?

7 A Correct.

8 Q That means a .25 caliber gun, that's what he's
9 referring to, right?

10 A I believe so.

11 Q And then you say, looks like a, it's inaudible, and
12 Schira says small gun?

13 A No. I said it looks like a --

14 Q Well, it's inaudible in the transcript, right?

15 A Yup.

16 Q And then Sergeant Schira says, small gun, and then
17 you say, like how big is that?

18 A Correct.

19 Q And then Sergeant Schira says, small, not even the
20 size of your hand, correct?

21 A Yes, correct.

22 Q And that's when you say, I don't know, it could be a
23 gun?

24 A Yes, correct.

25 And later on in that interrogation, going

1 to page -- the court's copy, 150, you went -- what
2 you say is you're talking about I -- top of the page,
3 at least.

4 ATTORNEY VISHNY: I'm going up a little bit
5 higher, Miss Schneider.

6 Q They're talking to you and it says, I don't know, I
7 believe it's not Paul though, right?

8 A Yes.

9 ATTORNEY SCHNEIDER: Judge, I know this is
10 going to be higher, we don't have a transcript that
11 matches her.

12 ATTORNEY VISHNY: It's about eight lines
13 higher. What page are you on? I'm on Page 150, so
14 it's --

15 ATTORNEY SCHNEIDER: Do you have a time
16 stamp near your reference?

17 ATTORNEY VISHNY: Well, it's right before
18 that 2:19:29. Yeah. It's about eight lines higher.

19 THE COURT: If there's going to be
20 reference, let's just wait until everyone is on the
21 same page before we proceed.

22 ATTORNEY VISHNY: Of course.

23 THE COURT: Just let us know when you're
24 there.

25 ATTORNEY SCHNEIDER: We're ready.

1 Q (BY ATTORNEY VISHNY) So you say you believe it's not
2 Paul and then the police are asking you why not,
3 right?

4 A Correct.

5 Q And they say: Is it because it's you?

6 A Yes, correct.

7 Q You say: No, it's not me either.

8 A Yes, correct.

9 Q And you also say: It's not Phong either I don't
10 believe. Because they didn't pull anything out.
11 That's what you think, right?

12 A Yes, correct.

13 Q And then Sergeant Schira says: Reach for your
14 pocket. There is something inaudible. Right?

15 A Yes, correct.

16 Q Now take your hand out. That's how long it takes to
17 get a gun out. Right?

18 A Correct.

19 Q Then you say: But like from what you guys show me,
20 of course there is a possibility.

21 A Correct.

22 Q And now you say you thought it was a bottle?

23 A Yes, correct.

24 Q And Schira is going to say something, but you guys
25 say it was a gun, right?

1 A Yes, correct.

2 Q And Sergeant Schira says: This gun is this big,
3 that's all, it's like a little .25. Remember that?

4 A Correct.

5 Q And so this isn't something -- this is something you
6 do remember him actually saying, correct?

7 A Correct.

8 Q Unlike some of the other stuff.

9 A Correct.

10 Q And he says: I reach into my pocket, I pull it out,
11 I do this, bang, and it's done. That's how long it
12 takes.

13 A Correct.

14 Q And you say: Yeah, just a split second, like you
15 said, I did not catch it.

16 A Correct.

17 Q All right. Now, this wasn't the last time when --
18 okay. So that's the first time the police talk, and
19 then the second time you bring it up and you say .22
20 to the police at that point, right?

21 A No, I never said that.

22 Q You never said it the second time.

23 A No.

24 Q Okay. So one minute. Well, I think we were just
25 talking earlier and I said that the time the police

1 come now when they're talking to you outside your
2 house, we just talked about this a few minutes ago.
3 You say: The gun, you guys told me it was a .22.
4 And then Sergeant Rabas says: No, no, we're not
5 going to talk about that. Right?

6 A Yes, correct.

7 Q All right. Just so I cleared that up.

8 Now -- and then, you know, Sergeant Rabas comes
9 and talked to you again on December 16th to kind of
10 confirm some stuff, right?

11 A Correct.

12 Q Another time there -- there is another time where
13 another investigator comes to talk to you, and this
14 time it's Sergeant Thao, right?

15 A Correct.

16 Q And when Sergeant Thao comes to your house, he's
17 looking for someone else to talk to, right?

18 A Correct.

19 Q But since you're there, he starts talking to you.

20 A Correct.

21 Q And clearly Sergeant Thao, you know, he -- does he
22 express the belief to you again that it's Chong who
23 did it?

24 A No.

25 Q Well, Sergeant Thao comes over after telling you who

1 he's looking for?

2 A Yup.

3 Q He says to you: Was it just you, Phong and then Paul
4 initially and about an hour later he was dropped off.
5 He's talking about Chong, right?

6 A Yes, I believe so.

7 Q Okay. And then Sergeant Thao says: Okay. And he
8 told you about what he did. Correct?

9 A No, he did not ask me that.

10 Q He didn't. So it's in the transcript but you don't
11 believe he ever asked you that?

12 A No, he was asking who I was all with and that's about
13 it.

14 Q Okay. So when Sergeant Thao said to you: So he just
15 said that he killed the guy, and I -- I realize this
16 is in Hmong on one side of the page and English. Do
17 you remember talking to Sergeant Thao a little bit in
18 Hmong?

19 A Yes.

20 Q And do you remember Sergeant Thao -- we're going to
21 use English here since people in the courtroom don't
22 speak Hmong.

23 A Sounds good.

24 Q So go with that side of the page.

25 A Okay.

1 Q So he just said that he killed that guy. Do you --

2 A He -- I don't recall him asking me that.

3 Q Okay. And -- okay. Just wait one minute until I ask
4 you a question. Okay? Unless you need a break?

5 A Oh.

6 Q But otherwise I have to ask you questions. Okay?

7 A Okay. Sounds good.

8 Q All right. And do you remember at Page 4 Sergeant
9 Thao saying: Because you were, let me see, you were
10 to the left of Paul. Do you remember him saying
11 that?

12 A Yup.

13 Q Right behind him or to the left. And you just say
14 yeah.

15 A Yup.

16 Q So you tell him you're to the left, okay?

17 A Correct.

18 Q And you tell him at that time when this happens you
19 were talking to Mikey, right?

20 A Yes.

21 Q And then you see that there's going to be a fight,
22 right?

23 A Yes, correct. But as soon as I said that he opened
24 up his binder and shut off the tape recorder.

25 Q Okay. So you're saying that Sergeant Thao shut off

1 his tape recorder and quit taping you for a while?

2 A Yeah. As soon as I brought Mikey Thao up.

3 Q Okay. And then how long was it before he turned his
4 recorder back on?

5 A I believe he did not even turn it back on.

6 Q Well, we still have more transcript here, so does
7 that change your belief?

8 A Yeah -- repeat that.

9 Q You don't really know if he shut his recorder off or
10 not, it's just what you thought was going on?

11 A Yes, correct.

12 Q And do you remember, maybe you don't, that what you
13 said to him then was you were talking to Mikey and
14 then you said: I saw like they were gonna fight or
15 something because I was like, uh, Mikey, let's forget
16 it, let's slide through and go take a drink, forget
17 about it, that you said that to Sergeant Thao in
18 Hmong but I'm reading you the English translation?

19 A I said we were going to get a drink because he asked
20 where were we going.

21 Q Right, right, you're talking to Mikey is what's in
22 the translation, not that you actually went and got a
23 drink.

24 A Yes, yes.

25 Q Okay. And then Sergeant Thao said: But you didn't

1 have time. Right?

2 A Yes, correct.

3 Q And you said: No, he didn't, he didn't budge either,
4 so -- and Sergeant Thao said right?

5 A Yes.

6 Q And what you told Sergeant Thao then was: I kind of
7 tried to shove him.

8 A That's correct.

9 Q And you're talking about Joshua Richards, that's the
10 person who you're saying to Thao you tried to shove.

11 A No, Mikey Thao.

12 Q So you tell Sergeant Thao you're trying to shove
13 Mikey Thao?

14 A Yeah. In a group like through the door.

15 ATTORNEY MAIER: I'm sorry. Can we --

16 THE COURT: Hold on. Just wait.

17 ATTORNEY MAIER: I didn't hear all of that
18 answer. Real quiet.

19 ATTORNEY VISHNY: I'm sorry. Let's --

20 THE COURT: Hold on. We'll have the clerk
21 read it back.

22 (Previous question and answer read back.)

23 THE COURT: Is that far enough back?

24 ATTORNEY MAIER: Yes. Thank you.

25 Q (BY ATTORNEY VISHNY) Okay. But you say Mikey didn't

1 move, he was kind of like, whoa, like watching the
2 guy too because the guy was gonna hit us. Right?

3 A Correct.

4 Q And then Sergeant Thao says: So what happened.
5 Right?

6 A Yes, correct.

7 Q And then you say: Well, I don't know really, I was
8 smoking a cigarette and -- right?

9 A Yes, correct.

10 Q Sergeant Thao points out you can't smoke inside,
11 right?

12 A Yes, correct.

13 Q Okay. So then you guys clear that up that that's
14 before the fight, right?

15 A Yes, correct.

16 Q All right. And what you -- what happens then is you
17 tell Sergeant Thao again in Hmong, but we're wording
18 it in English: We were going to drink, and as we
19 were walking in the hallway right there, I guess
20 Phong and Paul were trying to walk into the bar
21 already, and then the white person kept saying
22 something to them.

23 A Correct.

24 Q Okay. So that's not a hallway where you have on your
25 diagram there?

1 A I believe it is but --

2 Q You call that a hallway?

3 A Not really a hallway but entryway.

4 Q Okay. It's part of the foyer, right, it's just like

5 kind of a second foyer area?

6 A Yes, correct.

7 Q Okay. And actually it's not where you have it marked

8 victim, the hallway is farther down if you look at

9 that diagram going down?

10 A Yes, yes.

11 Q That's where the hallway is, correct?

12 A Correct.

13 Q And then Sergeant Thao says: He's a big guy,

14 right?

15 A Yes, correct.

16 Q And you say: Yeah, yeah, and then his girlfriend was

17 trying to stop him.

18 A Correct.

19 Q I was like, and he kept pointing fingers, he's trying

20 to swing at me too, so I say, hey, man, I don't even

21 know you, I don't want trouble with you. Right?

22 A Correct.

23 Q And then you tell Sergeant Thao he says to you,

24 right, I'm on Page 6 now in the middle of the page.

25 You were -- just before the shooting, you were kind

1 of behind Paul, and you say yeah, right?

2 A Yes, correct.

3 Q And Sergeant Thao says: Actually next to Paul. And
4 you say yeah to that?

5 A Yes, correct.

6 Q And he says: Paul threw a punch. Right?

7 A Yes, correct.

8 Q And then Sergeant Thao says: Did the guy do anything
9 to Paul before that.

10 A Yes, that's correct.

11 Q And you said: Well he kept coming, he was kind of
12 like he had his hand cocked back, he was trying to
13 swing but his girlfriend was holding.

14 A Correct.

15 Q So you tell Sergeant Thao that's what Joshua Richards
16 was doing before Paul actually hit him, that's when
17 he had the hand cocked back, that's what you told
18 Sergeant Thao.

19 A No. Paul -- yes, but I must have mistaken that Paul
20 hit him before that.

21 Q I'm just asking you what you told Sergeant Thao right
22 now. I want to be clear about that.

23 A Correct.

24 Q So this is on December 18th, ten days after it
25 happened, right?

1 A Yes, correct.

2 Q And you're talking about the guy's girlfriend, and
3 she's like, stop it, stop it, and I was like, dude,
4 your girlfriend is even trying to stop this, please
5 don't do this, you know?

6 A Yes, correct.

7 Q And then he says: And so then what happened after
8 Paul threw the punch. And you say: Then all of a
9 sudden I just saw a hand and bang. Right?

10 A No, I didn't say that.

11 Q You didn't say that?

12 A Yes.

13 Q But the bang happened right after the punch?

14 A Yeah, after he pinned us to the wall, yes.

15 Q Okay. And then you say: You know, I'm like, holy
16 shit, you know, stuff like that. Okay?

17 A That's correct.

18 Q All right. And how scared you were, right?

19 A Yes, correct.

20 Q Okay. Then Sergeant Thao says to you: Whose hand
21 did you see with the gun pump bang. Right?

22 A I don't recall him asking me that.

23 Q Your answer is: I saw a silver sleeve, it was almost
24 like this but like, and then Sergeant Thao says:
25 Black. Right? And you say: Black inaudible.

1 Correct?

2 A I can't recall that.

3 Q So he says: Okay, a silver sleeve, right? Sergeant
4 Thao says that?

5 A I don't believe so because I don't think that
6 conversation even lasted that long.

7 Q Okay.

8 A It ended right when something about Mikey.

9 Q Okay. So you say: I think it's like silver or
10 white. I'm not sure.

11 A I never said that.

12 Q And he says: Okay. And you say: But it's pretty
13 close. Right?

14 A Yes.

15 Q And then he says: Well, and the pictures so, you
16 know, I saw the pictures. Sergeant Thao says: Which
17 is, which is Chong. And you said: I don't know, I
18 believe so because he wore it. Right?

19 A Correct.

20 Q And then Thao says: You know how to put two and two
21 together. And you say yes?

22 A Correct.

23 Q Now let's talk about your trip to Milwaukee. Today
24 in court when you're being questioned, what you say
25 is you came to Milwaukee, if I remember this, you get

1 to the Hilton, it's still dark out, there's some
2 going on, but you've told a few different stories
3 about what happened when you came to Milwaukee to the
4 Hilton, haven't you?

5 A No, I haven't.

6 Q So you've always said the exact same thing, that you
7 came to Milwaukee, you guys went to -- you say your
8 relatives, you're referring to Peter Moua, right?

9 A Yeah, people in Milwaukee there.

10 Q Peter Moua is your cousin?

11 A Yes.

12 Q And he lives with some other people?

13 A Correct.

14 Q Is he the only one you're a blood relative to?

15 A No. Most of them are.

16 Q Most of them are your cousins. Is Dia Vang your
17 cousin?

18 A Yes.

19 Q Is Xai Thao your cousin?

20 A No.

21 Q Is Joseph, is he your cousin?

22 A Yes.

23 Q Is Jesus, is he your cousin?

24 A No.

25 Q Is Q your cousin?

1 A No.

2 Q And do you remember -- okay. I'm showing you what's
3 been marked as Exhibit 162. This is a transcript of
4 when Sergeant Rabas and Sergeant Lietzinger came to
5 your house, and this is before you went inside for
6 the five minutes. Okay?

7 A Yup.

8 Q And they asked you -- I'm going to just go back.
9 They were asking you some questions about who you saw
10 in Milwaukee, right?

11 A Yeah.

12 Q And then Sergeant Lietzinger says to you: Well who
13 were you partying with down there. Do you remember
14 that?

15 A Yes.

16 Q And you say: Ah, just some of my cousins. Right?

17 A Yes.

18 Q And then he says: What are your names, and you say:
19 Roger Thor. Right?

20 A I can't recall that.

21 Q Okay. But this is the transcript, and you --
22 actually then Sergeant Rabas says: Roger Thor. And
23 you say: Yeah. Right?

24 A Yes, correct.

25 Q Okay. So you don't tell him the same things you're

1 saying in court today about going to Q's and going to
2 Peter's?

3 A Yes, I have.

4 Q Oh, you did, huh?

5 All right. Let's go to the next place. Now on
6 December 16th -- on December 16th Sergeant Rabas
7 interview -- that's Exhibit 163. Right? Do you
8 remember that?

9 A I don't know. That's -- I believe so.

10 Q Now, I'm going to show you what's been marked as
11 Exhibit 163. This is a transcript of you talking to
12 Sergeant Rabas on December 16th. Okay?

13 A Okay.

14 Q So this is two days before Sergeant Thao interviewed
15 you.

16 A Okay.

17 Q Turning to Page 8, Line 11, Sergeant Rabas says:
18 About what time did you get to the hotel. And you
19 say: I believe it was about eight. Right?

20 A Correct.

21 Q And then Rabas says: And it was just you two, and I
22 know you talked about inaudible and stuff. Do you
23 remember that?

24 A Yes, correct.

25 Q And as far as that inaudible goes, what Sergeant

1 Rabas was telling you -- do you remember what he was
2 telling you that you talked about?

3 A Not off top of my head.

4 Q Was he asking you at all whether or not you were
5 talking about the shooting in Milwaukee? He says,
6 and I know you talked about something or other?

7 A I believe he said that, yes.

8 Q Okay. And you say: Okay, yeah. Right?

9 A Yeah.

10 Q And then he says: You then -- then you went to
11 Peter's house, or where did you go after the hotel.
12 Right?

13 A Yes.

14 Q And you said: Yeah, Peter, to watch the games and
15 hung out there for a bit. Right?

16 A That's correct.

17 Q And Sergeant Rabas says: The football game, the
18 football game. Right?

19 A Yes.

20 Q And there is some talk about fantasy football,
21 right?

22 A Yes.

23 Q And then you say: Just went back to the hotel and
24 spent the night there. Correct?

25 A Oh, yes, yes.

1 Q So when you talked to Sergeant Rabas at that time you
2 totally leave out that you went to Q's house at all.

3 A It was two nights so one of the nights we went back
4 to the hotel.

5 Q So you were in Milwaukee for two nights?

6 A I believe so because we got back on Monday.

7 Q So you went Saturday night?

8 A I think early morning, yeah.

9 Q So that's what you're saying two nights, that's what
10 you mean by that?

11 A Yeah, yeah.

12 Q But you know that Sergeant Rabas wants to interview
13 you about who possibly you or Chong has supposedly
14 told about this, right?

15 A Correct.

16 Q And you know that's the point of him questioning you,
17 right? He's trying to get information for his
18 investigation?

19 A That's correct.

20 Q And you just say you went to Peter's house, you never
21 mention Q's house, right?

22 A I just said, ah, I believe I did.

23 Q Okay.

24 A I believe I did.

25 Q But you couldn't remember JJ's Fish when you talked

1 to him. You remember where you went to eat?

2 A Yeah, yeah, yeah, yeah.

3 Q Must have been a pretty good meal, huh?

4 A Oh, yeah.

5 Q Okay. So all along here the police come to talk to
6 you several times and you know you're a potential
7 suspect, right?

8 A Correct.

9 Q And you tell them what you think they want to hear
10 and you want to make sure that you're not in trouble,
11 right?

12 A Correct.

13 ATTORNEY VISHNY: Nothing further.

14 THE COURT: Mr. Maier, any -- let me ask
15 this, Mr. Maier. Why don't we have counsel approach.

16 (Bench conference.) THE WITNESS: Can I use
17 the restroom?

18 THE COURT: Just one second. We'll take
19 care of that.

20 (Bench conference.)

21 ATTORNEY VISHNY: You're going to excuse
22 the jury?

23 THE COURT: Excuse the witness for a
24 moment, and while we're doing that we'll excuse the
25 jury for a moment so they don't have to wait in here.

1 Be about five minutes. And then from the sounds of
2 it, what we're going to do is we'll go a little bit
3 into the lunch hour but that way we don't break up
4 another witness so we'll be able to complete that.

5 Please rise for the jury.

6 (The jury was escorted out of the
7 courtroom.)

8 THE COURT: Mr. Thor, I'm going to have the
9 clerk or the court reporter read back some of the
10 questions that were asked of you previously, and then
11 that will prompt some additional questions, and so if
12 you could go back maybe one or two questions before
13 and then up to the -- and through the question and
14 answer and then that will -- and then, Mr. Maier,
15 we'll turn it over to him.

16 (Testimony from Page 67, Line 12 to Page
17 68, Line 4 read back.)

18 THE COURT: Okay. Mr. Maier.

19 **VOIR DIRE EXAMINATION OF JOE THOR**

20 **BY ATTORNEY MAIER:**

21 Q On the last two questions that you answered yes, that
22 the defendant had claimed to have done people -- I'm
23 sorry, done things to people that he hadn't done,
24 what are you referring to?

25 I guess let me ask it this way. What makes you

1 answer that question yes?

2 A Because he's a liar.

3 Q But give me an example of a time.

4 A All right. Two sisters, he said he got both of them
5 pregnant.

6 Q And are there other -- other things?

7 A Yes. He came over with a car that wasn't even his.
8 He's like, this is my car. And then a few days later
9 one of his friends is like, what, you told them
10 that's your car, that's not even your car.

11 Q And then the last question that was read you answered
12 yes was that the defendant had claimed to have done
13 bad things to people that he hadn't really done --
14 I'm sorry, bad things that he didn't really do, or
15 very close to that. What does -- what causes you to
16 answer that question yes?

17 A Because like the sisters, you know, for example, like
18 he said he got both of them pregnant. I can't
19 believe him.

20 Q And that's all that causes you to answer that yes?

21 A Yes.

22 ATTORNEY MAIER: That's fine.

23 THE COURT: Okay. Thank you.

24 ATTORNEY SCHNEIDER: Actually, just one
25 second once.

1 THE COURT: I'll wait.

2 Q (BY ATTORNEY MAIER) Mr. Thor --

3 ATTORNEY MAIER: And, Judge, I do have a
4 question.

5 Q (BY ATTORNEY MAIER) Mr. Thor, can you tell me about
6 a time that the defendant has claimed to have done
7 something bad that he had done something bad?

8 ATTORNEY VISHNY: Objection. That is not
9 responsive. We were going to ask what he meant by
10 that, and when he has said he's done things that are
11 bad, I don't think that they have a right to go there
12 based on this.

13 THE COURT: Why don't I -- parties come on
14 up.

15 (Bench conference.)

16 THE COURT: Okay. So just a few more
17 questions for you, Mr. Thor. Mr. Maier?

18 Q (BY ATTORNEY MAIER) Mr. Thor, you indicated that the
19 bad things that Chong told you he had done was having
20 claimed to have gotten two sisters pregnant, correct?

21 A Correct.

22 Q And you don't know that that was -- I'm sorry. You
23 know that's not true, correct?

24 A Correct.

25 Q Is there anything else that would cause you to answer

1 that question yes?

2 A No.

3 ATTORNEY MAIER: Okay.

4 THE COURT: Are we all set to bring in the
5 jury?

6 ATTORNEY VISHNY: Yup.

7 THE COURT: Please rise for the jury.

8 (The jury was escorted into the courtroom.)

9 THE COURT: Please be seated. I believe we
10 were at the point, Mr. Maier, for redirect.

11 ATTORNEY MAIER: Yes.

12 **EXAMINATION OF JOE THOR**

13 **BY ATTORNEY MAIER:**

14 Q Mr. Thor, at the end of the questions that Attorney
15 Vishny was asking you, she was -- I think you
16 indicated that part of the reason why you didn't want
17 to talk to the police was because you didn't want to
18 get in trouble; is that correct?

19 A Yes, correct.

20 Q You didn't do anything at Luna that would -- could
21 get you in trouble though, correct?

22 A Correct.

23 Q You had nothing to do with the shooting except being
24 in the room when it happened.

25 A Yes, correct.

1 Q Maybe even on the other side of the person when he
2 got shot?

3 A What was that?

4 Q You were on the other side of the person when he got
5 shot.

6 A What person? Are you speaking about the victim?

7 Q Yes. When Mr. Richards got shot, he was facing you,
8 right?

9 A Yes, correct.

10 Q Where did the shot come from?

11 A I think -- I don't know, a little behind him to the
12 side I believe.

13 Q And you just held your hand up to your left side,
14 right?

15 ATTORNEY VISHNY: I couldn't see that. I'm
16 sorry.

17 A No, not left side, but like an angle, yeah.

18 Q I'm sorry?

19 A He's right here, I'm over, you know, to the side
20 here.

21 Q His left side?

22 ATTORNEY VISHNY: I'm going to object to
23 leading at this juncture about this issue.

24 THE COURT: I'm going to give a small bit
25 of latitude, but just if you spend too much time then

1 I'll expect you to rephrase.

2 ATTORNEY MAIER: That's fine.

3 Q (BY ATTORNEY MAIER) As you're facing Josh and as you
4 see the flash and hear the bang, which side is it
5 coming from as you look at it?

6 A You mean the flash or the --

7 Q The flash.

8 A I don't know. It was quick flash, the whole room
9 kind of lit up.

10 Q Okay. It's dark in there, right?

11 A Yes, correct.

12 Q It was still dark when you -- how dark was it when
13 you left?

14 A It was still dark.

15 Q How dark was it when Paul took the swing?

16 A It was dark also.

17 Q How dark was it when you had gone downstairs to the
18 bathroom before this all happened?

19 A It was really dark down there, yeah.

20 Q Dark upstairs -- or on the ground level still when
21 you first left to go downstairs?

22 A Yes, because all the walls are like pretty much black
23 so --

24 Q Do you know somebody named Teng Lee?

25 A Yes, I do.

1 Q How do you know Teng?

2 A I went to school with him also.

3 ATTORNEY VISHNY: Judge, can we approach
4 please?

5 (Bench conference.)

6 THE COURT: Go ahead, Mr. Maier.

7 Q (BY ATTORNEY MAIER) How do you know Teng?

8 A Through school.

9 Q And he's related to someone you know as well,
10 correct?

11 A Phong.

12 Q How is he related to Phong?

13 A Brothers.

14 Q All right. Back in December of 2013, do you know
15 where Chong's mother lived?

16 A Yes, I do.

17 Q Where did she live?

18 A I believe in Neenah. Well, she lived in Appleton
19 then Neenah.

20 Q Appleton and then Neenah?

21 A That's correct.

22 Q Same block as you in Appleton?

23 A No.

24 Q When you and Paul and Phong run out of Luna that
25 night, what did Paul -- what clothing did Paul get

1 rid of?

2 A I can't recall.

3 Q Did he get rid of anything?

4 A I don't believe so.

5 Q And you recall Phong taking off the vest, right?

6 A Yes.

7 Q And you've told us that you took off your hat and got
8 rid of that?

9 A Yes.

10 Q As you're doing this, is Paul doing anything?

11 A I don't think so.

12 Q So no.

13 A No.

14 Q Now, you -- you testified on cross that the officers
15 wanted you to make a phone call to Paul, correct?

16 A Correct.

17 Q And they were going to record that phone call,
18 right?

19 A Yes, correct.

20 Q And you told them what, I have to do it later?

21 A No, I just told them I'll try to do that, I'll see if
22 I can do it.

23 Q And it never happened, right?

24 A No, it never happened.

25 Q How willing really were you to do that?

1 A Not willing at all.

2 Q You didn't want to be involved in this, right?

3 A That's correct.

4 Q And you know that if you do that someone might find
5 out later on that you made a recorded call with the
6 police?

7 ATTORNEY VISHNY: Objection. Leading.

8 THE COURT: Please rephrase.

9 A Can you repeat that?

10 Q Well, I have to ask it differently.

11 A Oh.

12 Q What's your concern if you make a recorded phone call
13 with the police?

14 A I didn't really have no concerns, it was just privacy
15 because that's my brother's phone so why would I want
16 to do that to my brother's phone.

17 Q We're talking about your brother -- which brother's
18 phone is it that we're talking about it?

19 A I believe Cassidy.

20 Q And does Cassidy have one phone or more than one
21 phone?

22 A One phone. The police officers still have it.

23 Q Now, you did tell the police some things, correct?

24 You told them a lot of things, right?

25 A Correct.

1 Q You told them that Chong came to your house after the
2 shooting.

3 A Yes, correct.

4 ATTORNEY VISHNY: Again object to leading
5 at this juncture.

6 THE COURT: I'll allow that question to
7 stand. Please move on.

8 Q (BY ATTORNEY MAIER) When you got home, you indicated
9 that Phong and Paul called for a ride, correct?

10 A Yes, I believe so.

11 ATTORNEY VISHNY: Same objection.

12 ATTORNEY MAIER: I'm really just trying to
13 get --

14 THE COURT: I'll consider it somewhat
15 foundational.

16 Q (BY ATTORNEY MAIER) What did you do after they
17 left?

18 A Nothing, just sat in my room, laid down.

19 Q You sat in your room and laid down?

20 A Yeah.

21 Q Did you sleep?

22 A I was about fall asleep and then I heard the doorbell
23 ring.

24 Q What did you tell the police about what Chong had
25 done with the gun that he used in the shooting?

1 A I had told them he flushed it down the toilet.

2 Q And where?

3 A At Sharks nightclub.

4 Q Whose car did you tell the police you took to
5 Milwaukee?

6 A I believe Chong's mother's.

7 Q Where did you stay in Milwaukee, according to what
8 you told the police?

9 A The Hilton and Q's house and Peter Moua's house.

10 Q Who else was with you when you went to Milwaukee,
11 according to what you told the police?

12 A Chong Lee.

13 Q Who paid for the hotel room when you went to
14 Milwaukee, according to what you told the police?

15 A Chong.

16 Q And what time did you tell the police that Chong had
17 checked into the hotel?

18 A I just guessed 8:00.

19 Q 8:00 a.m. or p.m.?

20 A A.m.

21 Q A.m.? When Chong indicated that he wanted to go to
22 Chicago to look for this car, how long was it before
23 you left or before he picked you up at your house and
24 you left for Milwaukee?

25 A What do you mean, how long was it for him to come

1 back to pick me up?

2 Q Correct.

3 A I believe like an hour or so.

4 Q So it was the same night yet that you drove down to
5 Milwaukee with him?

6 A Yes, correct.

7 Q When you talked to the officers on December 10th,
8 which would have been right when you got back -- or
9 right after you got back up to -- do you recall that
10 conversation?

11 A Yes.

12 Q And I think Attorney Vishny had you looking at some
13 transcripts of that conversation. Do you recall
14 that?

15 A That's correct.

16 Q And during that conversation the officers were trying
17 to get -- they're making it pretty clear to you they
18 think Paul did this, right?

19 A That's correct.

20 Q And you're not willing to say that Paul did this,
21 right?

22 A I was saying I know he didn't do it.

23 Q You know Paul didn't do it?

24 A Yeah. Because his hands were spread wide open like
25 this pinning me to the wall and Phong. So how would

1 you just shoot, he gonna shoot like this?

2 Q Now you've told all of us today about what Chong told
3 you while you were going down to Milwaukee, correct?

4 A Yes, correct.

5 Q And you recall him saying that?

6 A Yes, correct.

7 Q That's what he said.

8 A Yes, correct.

9 ATTORNEY MAIER: That's all the questions I
10 have. Thank you, Joe.

11 THE COURT: Attorney Vishny.

12 ATTORNEY VISHNY: Yes, I do. Just a few.

13 **EXAMINATION OF JOE THOR**

14 **BY ATTORNEY VISHNY:**

15 Q The prosecutor was asking you if you know Teng Lee,
16 correct?

17 A That's correct.

18 Q Teng Lee has never told you to not testify in this
19 case, has he?

20 A No, sir. He never contacted me.

21 Q He never threatened you, right?

22 A No, never.

23 Q You said that -- I'm going to go back to Exhibit No.
24 160 now, going back to your first interview with the
25 police officers on December 10th. I'm going to show

1 you a page from that. Okay? We're on page of 60.

2 And police officer Sergeant Rabas says did anybody

3 else throw a punch at him, and you said no. And then

4 he asked you if you were a hundred percent sure, and

5 you said yes, right?

6 A Correct.

7 Q And then he said, on what side of his face would he

8 have hit him. If Paul swung a punch, what side, does

9 he hit him on the right side or does he hit him on

10 the left side. And your answer is, would have to be

11 the left. Correct?

12 A I believe so, yes.

13 Q And then Sergeant Rabas says left side. And you say,

14 okay, right?

15 A Yes, correct.

16 Q Then he asks you, where do you think the guy got

17 shot, and you said you didn't know?

18 A Yes, correct.

19 Q Now, you say that right after this punch -- what

20 you're saying today is that Paul -- I think the word

21 you used just now were his hands were spread wide

22 open. Right?

23 A Yup.

24 Q So in other words what you're saying is -- I want you

25 to stand up so everybody can see your hands. Okay?

1 A Okay.

2 Q When you say his, meaning Paul's hands were spread
3 wide open, you're talking about right now as he's
4 backing away from the guy he just punched, right?

5 A Yeah, yeah. Like that.

6 Q And just -- I want you to show the jury, and big, so
7 everybody can see.

8 A He had his hands out like that and he pinned us to
9 the wall.

10 ATTORNEY VISHNY: I'd ask the record to
11 reflect that Mr. Thor has his hands both out to the
12 side in a slightly backward angle when he stood up.

13 A That's correct.

14 Q Is that accurate?

15 Okay. So he got his hands completely showing,
16 nothing in his hands, and at that point he's pinning
17 the two of you guys to a wall, right?

18 A Yes, correct.

19 Q And while he's there with nothing in his hands
20 pinning you to a wall, that's when you see this
21 flash, right?

22 A I see Mr. Richards coming towards us.

23 Q You see him coming towards you and then the flashes
24 occurring, right?

25 A Yes, but I don't --

1 Q I'm sorry. I didn't mean to cut you off.

2 A I just kind of put my hands up to get ready to get

3 punched so --

4 Q Right. So you take a defensive move and you go like

5 this, right?

6 A Yes.

7 Q You didn't close your eyes though?

8 A No.

9 Q You don't close your eyes when somebody might hit

10 you?

11 A Yeah.

12 Q You need to be able to see what's going on, right?

13 A Correct.

14 Q And it's right then the flash occurs?

15 A Yes, correct.

16 Q Lights up the whole room?

17 A Yes, correct.

18 Q And right after the flash you see him to the floor

19 and you guys immediately run out the door?

20 A Yes, correct.

21 Q Because you're scared?

22 A Correct.

23 Q Gunshot, right?

24 A Correct.

25 Q Don't want to get hit?

1 A Yes, correct.

2 Q Run away?

3 A Yes, correct.

4 Q Toss your stuff in the garbage because you're scared
5 the police are going to talk to you about it,
6 right?

7 A No, just scared whoever shot. We don't know who
8 shot, so what if they're shooting at us, so just
9 changing appearance.

10 Q But you're positive Paul runs, you know, he has his
11 hands out kind of like almost protecting or pinning
12 you guys?

13 A Correct.

14 Q Then the guy comes towards you and, boom, you guys
15 run out of there?

16 A Yes, correct.

17 ATTORNEY VISHNY: Nothing further.

18 THE COURT: Any redirect?

19 **EXAMINATION OF JOE THOR**

20 **BY ATTORNEY MAIER:**

21 Q Did you hear anything -- yes, please.

22 Did you hear anything said out loud before the
23 shot went off?

24 A No.

25 Q There was no warning?

1 A No.

2 ATTORNEY MAIER: That's all.

3 THE COURT: Counsel approach just for a
4 second.

5 (Bench conference.)

6 THE COURT: We will be in -- I'm sorry. We
7 have some questions. I apologize.

8 (Bench conference.)

9 THE COURT: Okay. We have several
10 questions for you, Mr. Thor.

11 Showing you what's previously been marked as
12 Exhibit 93, and can you tell me, is -- is Chong
13 located in that diagram?

14 THE WITNESS: No, he is not.

15 THE COURT: Okay. Then I'll take that
16 back, sir. Thank you.

17 The next question: Was it unusual to have Chong
18 show up in the night and want to go on a road trip
19 out of town?

20 THE WITNESS: No. That guy likes to travel
21 around, go see girls and stuff so --

22 THE COURT: All right. Why did you decide
23 to return to Appleton without looking at the car in
24 Chicago?

25 THE WITNESS: Because it was a blizzard and

1 I said I gotta get back. It's already been two days.
2 Since it was snowing, I just want to go home.

3 THE COURT: What prompted you to pick
4 Sharks for the place where Chong Lee flushed the gun?

5 THE WITNESS: Because usually when we're at
6 Luna we just go to Sharks only if we're around that
7 area.

8 THE COURT: Okay. What was the date you
9 told officers Chong Lee flushed the gun at Sharks?

10 THE WITNESS: I cannot recall that day. I
11 believe it was the day Chong got arrested.

12 THE COURT: Okay. Mr. Maier, any follow-up
13 questions.

14 **EXAMINATION OF JOE THOR**

15 **BY ATTORNEY MAIER:**

16 Q Why isn't Chong in that diagram?

17 A Because I didn't know where he was at that time.

18 Q Where was your focus at that time?

19 A Just towards Mr. Richards.

20 ATTORNEY MAIER: Thank you. That's all.

21 THE COURT: Any follow up cross-examination
22 questions?

23 ATTORNEY VISHNY: No.

24 THE COURT: All right.

25 And, sir, thank you.

1 And let's rise for the jury. I'd ask that you
2 be back at 1:30. We'll give you an hour.

3 (The jury was escorted out of the
4 courtroom.)

5 THE COURT: We had -- we had two brief
6 sidebars. One pertained to concerns about some
7 cross-examination questions, a voir dire was
8 conducted. It was addressed what questions would be
9 able to be asked and that resolved that issue.

10 There was a second sidebar pertaining to
11 concerns about questions related to Mr. Teng Lee.
12 The court allowed those questions.

13 Anything else that you can recall from any
14 sidebar discussions or is that an accurate summary to
15 the best of your recollection, Attorney Schneider?

16 ATTORNEY SCHNEIDER: It is, Judge.

17 THE COURT: Attorney Vishny?

18 ATTORNEY VISHNY: Yes, that is.

19 THE COURT: Okay. We'll be in recess until
20 1:30.

21 ATTORNEY VISHNY: Yes. Judge, I have moved
22 in Exhibit 160, but I'm going to ask the court's
23 permission to be able to take transcripts. We will
24 go through everything later and make sure that all
25 copies are with the court, but we still need to use

1 these right now.

2 ATTORNEY SCHNEIDER: The clerk can probably
3 make you a copy over lunch. Can you make a copy of
4 160?

5 ATTORNEY VISHNY: I was going to not --

6 THE COURT: We'll make a copy.

7 ATTORNEY VISHNY: Okay. That's fine.

8 Could you -- I think the State would like a copy too.

9 THE COURT: I'll do two copies.

10 (Lunch recess.)

11 (The jury was escorted into the courtroom.)

12 THE COURT: Please be seated. State ready
13 to call its next witness?

14 ATTORNEY MAIER: We are.

15 Your Honor, the State calls Dan Campbell.

16 THE COURT: If you would please remain
17 standing, the clerk will swear you in, sir.

18 (Oath administered to witness.)

19 THE WITNESS: I do.

20 THE CLERK: Please state your full name and
21 spell it for the record please.

22 THE WITNESS: Daniel J. Campbell,
23 C-A-M-P-B-E-L-L.

24 THE COURT: You may be seated, sir.

25 Mr. Maier, your witness, sir.

1 **EXAMINATION OF DANIEL J. CAMPBELL**

2 **BY ATTORNEY MAIER:**

3 Q Good afternoon, Mr. Campbell.

4 A Good afternoon.

5 Q How are you employed, sir?

6 A I'm a forensic scientist supervisor in the DNA
7 Analysis Unit at the State Crime Lab in Madison.

8 Q How long have you worked for the State Crime Lab in
9 Madison as a forensic analyst?

10 A A little over 22 years.

11 Q And how much of that has involved DNA analysis?

12 A The first 17 years I worked at the laboratory as an
13 analyst on the bench performing DNA analysis on
14 evidence, and then the remaining five years has been
15 as a supervisor for the unit.

16 Q And how many analysts do you supervise?

17 A As a unit, I have assigned to me for supervision
18 14.

19 Q Is one of them Samantha Delfosse?

20 A She is not one assigned directly to me. That's about
21 half of the unit in the casework section of the
22 analysis unit, so approximately 28, and she's
23 actually assigned to one of the other supervisors.

24 Q Okay. We heard some testimony about her the other
25 day, I'm sorry, from her the other day about touch

1 DNA, and so I think the jury and everyone else knows
2 more or less what we're talking about, but in -- in
3 the crime lab, or with -- from the crime lab are
4 there a set of guidelines or suggestions for law
5 enforcement agencies about the submission of DNA --
6 excuse me, submission of items for DNA analysis?

7 A Yes, there is.

8 Q And if you could summarize the suggestions or
9 procedures about submissions for touch DNA analysis
10 for the jury please.

11 A Touch DNA analysis as a whole would be in my
12 description not optimal DNA evidence just because the
13 amount of DNA that typically can be recovered can be
14 very low. We typically try to focus on evidence, if
15 there is evidence available, that contains biological
16 fluids, so fluids such as blood, semen, saliva. That
17 would not be considered touch DNA evidence. Touch
18 DNA evidence would be evidence being briefly touched
19 by the skin and then if there is skin cells present
20 on that item to be able to obtain a DNA profile. So
21 touch DNA evidence for the most part, for cases like
22 property crime, it's not an acceptable type of
23 evidence. There are guidelines, so we do have
24 exceptions at times based on communications with
25 attorneys or law enforcement agencies.

1 Q Now, at some point in the later part of 2014 or the
2 early part of 2015, did you receive a request from
3 the Appleton Police Department related to an analysis
4 of some unfired shell casings that had been recovered
5 as part of a homicide case?

6 A Yes, I did.

7 Q And it was Sergeant Kevin Thompson from -- now
8 retired from Appleton PD that made that request,
9 correct?

10 A That is correct.

11 Q What did you do in response to the request?

12 A We had a phone conversation regarding some unspent,
13 unfired shells that were within water and whether or
14 not that would be an item worthwhile to submit to the
15 crime lab for testing. I basically described our
16 experience with touch DNA, just like I did I guess
17 with you previously, and felt that it would not be a
18 worthwhile item to submit, and then at that time
19 offered if he would like I could write a letter
20 basically summarizing DNA submission guidelines,
21 touch DNA evidence, and evidence such as he was
22 describing.

23 Q And did you do that?

24 A Yes, I did.

25 Q Your -- you indicated before these are -- these are

1 guidelines but they're actually more like
2 suggestions, correct?

3 A Correct.

4 Q And if someone calls and has a conversation with you,
5 there might be something unique to the piece of
6 evidence or to the case itself that might cause the
7 lab to be willing to take a look anyway, correct?

8 A That is correct.

9 Q What are some of the -- what are some of the issues
10 with, first, shell casings in analyzing for touch
11 DNA?

12 A Well, shell casings as a whole, if they're fired
13 casings -- when a bullet is fired, there is heat
14 generated, often casings are metal, they become very
15 hot and it degrades. In an unfired casing we're
16 still talking about a smooth metal surface. DNA --
17 for example, if we use a handgun, a handgun typically
18 will have grips on it, textured areas, those are the
19 areas for DNA evidence or skin cells would be
20 recovered from someone handling or rubbing on the
21 skin, and then we'll attempt to to recover those skin
22 cells. Smooth surfaces contradictory speaking to
23 that same thought process, smooth doesn't retain or
24 capture those skin cells nearly as well so a shell
25 casing that's metal is a smooth surface that readily

1 doesn't collect skin cells, you know, on the item.

2 Q So an unfired shell casing just found on the ground
3 would not be an optimal candidate for touch DNA,
4 correct?

5 A Correct.

6 Q And then adding in, as you mentioned, a fired casing
7 because of the heat that's involved in the process of
8 firing the bullet would make that even less optimal,
9 correct?

10 A Correct.

11 Q What about sitting in water for some period of
12 time?

13 A That also would make the item less optimal, as far as
14 the ability to obtain enough skin cells or DNA to get
15 a DNA profile.

16 Q Does it matter how long an item sits in water as far
17 as that? We're talking about something that's
18 smooth.

19 A Anytime water, essentially washing any item, so your
20 hands, if you have DNA on your hands from someone
21 else and you're washing your hands, those cells are
22 washed away. Same process with the shells with skin
23 cells potentially on them.

24 Q If there even were skin cells in the first --

25 A Or enough skin cells in the first place to be able to

1 obtain a DNA profile.

2 Q Would the size of -- size of the casing or cartridge
3 have an impact on things too?

4 A It may. I mean, the larger the item, although it
5 becomes more difficult to target where to swab, we
6 can't just put an item into a tube to throw some
7 chemicals and/or agent in there to attempt to obtain
8 a DNA profile, so the larger the item it becomes more
9 difficult to concentrate those cells and get enough
10 to do DNA, but it could. I mean a larger item or a
11 larger casing is still small, again, the opportunity
12 to have more skin cells associated with it. That's
13 possible.

14 ATTORNEY MAIER: Okay. Mr. Campbell, thank
15 you very much. That's all the questions I have.

16 THE COURT: Any cross-examination?

17 **EXAMINATION OF DANIEL J. CAMPBELL**

18 **BY ATTORNEY VISHNY:**

19 Q So if I understand this right, there are guidelines
20 but there can be exceptions, right?

21 A That is correct.

22 Q And so when you communicated with the Appleton Police
23 Department and you advised them the guidelines, they
24 didn't request that any tests be made?

25 A No further requests were made of the lab for those

1 items to be examined, that's correct.

2 ATTORNEY VISHNY: Thank you. Nothing
3 further.

4 THE COURT: Any redirect?

5 ATTORNEY MAIER: Nothing else. Thank you,
6 sir.

7 THE COURT: Members of the jury, any
8 questions for consideration?

9 (No response.)

10 THE COURT: Thank you, sir. You may be
11 excused.

12 ATTORNEY SCHNEIDER: The State would then
13 call Officer John Schira.

14 THE COURT: If you please remain standing,
15 the clerk will swear you in.

16 (Oath administered to witness.)

17 THE WITNESS: I do.

18 THE CLERK: Please state your full name and
19 spell it for the record please.

20 THE WITNESS: My name is John Schira,
21 spelled S-C-H-I-R-A.

22 THE COURT: Whenever you're ready.

23 ATTORNEY SCHNEIDER: Thank you.

24 **EXAMINATION OF JOHN SCHIRA**

25 **BY ATTORNEY SCHNEIDER:**

1 Q Good afternoon. How are you?

2 A I'm good. Thank you.

3 Q I just want to walk you through some things that you
4 did in an investigation for a shooting back at Luna
5 Lounge in December of 2013. Do you -- did you work
6 on that date?

7 A I did.

8 Q I haven't asked this to begin, but how are you
9 employed?

10 A I am a City of Appleton police officer.

11 Q How long have you been employed in law enforcement?

12 A With Appleton roughly 18 years and a couple years out
13 in California.

14 Q And what are your current duties for the Appleton
15 Police Department?

16 A I'm a detective.

17 Q How long have you worked as a detective for Appleton
18 Police Department?

19 A Nine years.

20 Q And have you had any special assignments as a
21 detective?

22 A Before I was a detective, I was also in the CRU Unit
23 which is also an investigation unit.

24 Q And how many years did you serve in the CRU Unit?

25 A Six years.

1 Q Can you describe for the jury generally what the
2 focus of the CRU Unit is?

3 A Street crimes, street investigations.

4 Q So, in total, 15 years you've been an investigator
5 there then?

6 A Correct.

7 Q What did you do your first three years, if I can
8 ask?

9 A I was a patrol officer.

10 Q And just to help assist the jury understand, Sergeant
11 Schira, are there yearly or annual requirements for
12 training for officers?

13 A There is.

14 Q And if you recall, how many or what's the current
15 requirement?

16 A Well, depending on I guess your specialty, the
17 general officers will have yearly updates, legal
18 updates which are taught by either judges or, you
19 know, district attorneys, things like that. Those
20 are four hours. There is also in-services that we do
21 that can be either tactical type of training like
22 firearms, EVOC driving, stuff like that, or it can be
23 case law, investigations, things like that.

24 Q And on top of that, does the City of Appleton require
25 you at times have additional training that you do as

1 a city employee?

2 A They do, they do.

3 Q Is part of the ongoing training involved, I think you
4 called it tactical training, but firearm training?

5 A It is.

6 Q Do you have any unique or specialty related to
7 firearms?

8 A I do.

9 Q What is that?

10 A I'm a unified tactical instructor, which means that
11 anything dealing with tactics, could be defensive
12 tactics, firearms, EVOC driving, communication
13 skills, I'm a trainer in that. I'm also a SWAT
14 member, and I'm a sniper on the SWAT team.

15 Q And does that involve you going to some specialty
16 trainings related to those duties?

17 A It does.

18 Q How long have you held that -- I don't know if I want
19 to call it an assignment, but those duties?

20 A Pretty much right from the get-go, probably 16, 17
21 years.

22 Q And, Sergeant Schira, during your career has some of
23 your training also focused on interviews of
24 witnesses, children or suspects?

25 A It has.

1 Q Is that something that is done on an annual basis?

2 A We get annual training in the form of in-service
3 training and legal update type of training, and then
4 there is also some specialized training that we go
5 to.

6 Q And have you gone to specialized training related to
7 when your duties were the street crimes unit?

8 A I did.

9 Q And what about when you've now just been assigned to
10 general detective unit or investigation unit?

11 A I have.

12 Q What are some of those trainings?

13 A I've gone to DCI street investigator school that was
14 a two-week schooling.

15 Q I say we all talk in our own alphabet soup, so if you
16 don't eat my soup you don't know. DCI means what?

17 A Department of Criminal Investigations.

18 Q And that's a State of Wisconsin agency?

19 A Yes, ma'am.

20 Q Okay. So I interrupted you. It was a DCI
21 training?

22 A Street investigation school.

23 Q Okay. Have you gone to any trainings related to
24 homicide investigations?

25 A I've gone to death investigation school, I've done

1 numerous in-service trainings for violent crime
2 investigation, I've gone through additional training
3 like at the techs for in-service and investigation,
4 backgrounds, things like that.

5 Q The death investigation school, when was that, if you
6 even know, Sergeant?

7 A I believe it was eight years ago.

8 Q And have you specifically gone to trainings that
9 focus on interviewing -- I'm going to talk about
10 adult witnesses or suspects.

11 A I have.

12 Q What trainings in that field have you gone to, if you
13 know?

14 A The Department of Criminal Investigation training,
15 the two-week school, that was an investigation type
16 of school.

17 Q I'm sorry. Did you say a two-week school?

18 A That was a two-week school, yes.

19 Q Eight hours a day?

20 A Yes.

21 Q All right. Sorry. I interrupted you.

22 A I also went to a Reid school, I believe that was ten
23 or eleven years ago, that was a three-day school.

24 Q And based upon these trainings, is there any set
25 practice you have to utilize when conducting an

1 investigation?

2 A There is really not a template for that. I think
3 investigations are something that you certainly get
4 training from and you pick things up when you train,
5 but most of it is -- for me has been -- I guess it's
6 like when I grew up on a farm. I learned how to do
7 that from watching my dad and my brothers do it, and
8 that's kind of what I did here. I worked with good
9 investigators and I watched the techniques and
10 tactics that they use and I use those myself.

11 Q From your past practice, Sergeant Schira, have you
12 had people that you wanted to talk to who refuse to
13 speak to you?

14 A Yes.

15 Q Do you have people who later you found they had
16 information about what you were asking about and they
17 still refused to speak to you?

18 A Yes.

19 Q From your past experience, what are some of those
20 reasons?

21 A Sometimes --

22 ATTORNEY VISHNY: Object. Relevancy.

23 ATTORNEY SCHNEIDER: Well, I either ask it
24 now or I can ask it later in the interviews, but I
25 thought it was more appropriate to lay some of this

1 now.

2 THE COURT: I'll give a little bit of
3 latitude. Foundational. Go ahead. Do you need
4 the question read back?

5 THE WITNESS: No, sir.

6 A I think there is a variety of reasons why so many
7 people don't talk to you. One time it could be fear,
8 sometimes people are afraid of police officers,
9 sometimes it's because they're guilty of something
10 and they don't want to talk to you, sometimes they
11 don't want to incriminate a friend, a loved one.
12 There is -- wide variety of why people don't want to
13 talk to you.

14 Q Have you found that in your 18 years there's also
15 from your past experience people sometimes just don't
16 want to be involved?

17 A Yes.

18 Q When you go into an interview, Sergeant, do you have
19 a set script you use at all?

20 A Not at all.

21 Q Why is that?

22 A Because people are people. Everybody is different.
23 When you talk to people, you have to -- you know, you
24 have to relate to them, you have to relate to what
25 they're going through.

1 Q And is it part of your experience that, I think you
2 might have said this already, but do you always take
3 the same approach in every interview?

4 A No, I do not.

5 Q Why not?

6 A Again it goes back to, you know, that everyone is
7 different, every circumstance is different. You use
8 the same, I guess, recipe or template every time,
9 it's not going to work.

10 Q And I know you mentioned some of the trainings that
11 you've gone through related to interviewing. Do you
12 follow any set structure from either one of them?

13 A No. Again, I guess when you go to training, it
14 doesn't matter if it's tactical training or if it's
15 investigation training, there is things that you get
16 from the training that you glean from it and that you
17 use and there is things that you don't.

18 Q Have you had to deal with witnesses, Sergeant Schira,
19 who have been very emotional because of the time
20 period when you're interviewing them related to an
21 incident?

22 A Yes.

23 Q Does that come through in their interviews?

24 A Yes.

25 Q Sorry. I'm hitting the microphone here with my pen.

1 And even with a person who is showing high
2 emotion, is there one set way you can approach them
3 when trying to talk to them?

4 A No.

5 Q Do you take a different approach when you're talking
6 to someone who is a victim/witness or a victim?

7 A Yes. I mean, you -- you're always going to take a
8 wide variety of things into account when you're
9 interviewing someone.

10 Q What about someone who you might think is involved in
11 an offense?

12 A Yes.

13 Q Have you talked -- your past experience and training,
14 have you talked to witnesses who have known the
15 suspect?

16 A Yes.

17 Q Been related to the suspect?

18 A Yes.

19 Q What are some of the issues you've encountered in
20 those types of situations?

21 A As you pointed out earlier, it's very difficult
22 sometimes to get someone who is a friend or a
23 relative to -- to give you details, to give you
24 information on the incident.

25 Q Do you have -- I think this comes from the TV world,

1 and I'm not going to remember all the famous pairs of
2 investigators on TV, but do you have a set partner
3 you're assigned with in the Appleton Police
4 Department?

5 A No, I do not.

6 Q Okay. How many investigators are -- and I might as
7 well reference back to 2013. If you get the number
8 wrong, not a big deal if you remember the range, how
9 many investigators were in the investigative unit
10 back in 2013?

11 A I believe there was, let's see, Dan, Chue, Neal,
12 seven or eight maybe.

13 Q Okay. And then were there also then investigators
14 assigned to what is the CRU Unit?

15 A Yes.

16 Q I won't ask you try to guess how many. Is it more or
17 less?

18 A I think it's just a little less.

19 Q Can the approach you take in an interview change
20 depending upon who the partner is that you're to go
21 do the interview with?

22 A Yes.

23 Q Why is that?

24 A Because we're just like the people we interview.
25 We're people. We have different skill sets. We have

1 different ability to relate and talk to people, and
2 it's just normal, I guess.

3 Q When you -- and you've obviously during your career
4 done interviews with people where there is not
5 another officer with you?

6 A Many times.

7 Q When you have another officer that's going to do an
8 interview with you, do you talk through the interview
9 with that person, come up with a script, prepare in
10 any way like that?

11 A Very rarely.

12 Q Why not?

13 A I guess because until you have contact with the
14 person, to try to come up with a preconceived notion
15 or plan, it just doesn't work out.

16 Q I'm going to let you pick what time frame you want to
17 do here, Sergeant, whether it's in an average month
18 or an average year. How many times do you think
19 you've interviewed, and I'm going to say broadly
20 witnesses, so it could be a victim, a witness or
21 person who ultimately is the suspect?

22 A Boy, a lot. I mean some investigations it can be
23 just one person and some investigations it can be,
24 you know, ten, fifteen. Hundreds, I guess,
25 throughout a year.

1 Q And would have that been the same amount that you did
2 approximately when you were assigned to the CRU, the
3 street crimes unit?

4 A Yes.

5 Q I want to now direct your attention, Sergeant Schira,
6 to this night. It would have been -- we've been
7 referring to it as Saturday evening, December 7th
8 into the early morning hours of December 8th, 2013.
9 Were you working that night?

10 A No, I was not.

11 Q Okay. How did you become involved in the case?

12 A I was called in.

13 Q And who makes that call?

14 A At that time it was Lieutenant Gostisha.

15 Q Is that common when there is a shooting for you as an
16 investigator to be called in?

17 A Yes.

18 Q And when you were called in, were you aware if other
19 officers had also been called in?

20 A Yes.

21 Q What -- if you remember, Sergeant Schira, what time
22 were you called in?

23 A I think I was -- it was a little bit later in the
24 evening, I want to say it was probably after two,
25 maybe between two and three.

1 Q And where were you assigned to go?

2 A I responded first to the police department. I got my
3 equipment and then I responded to Luna Lounge.

4 Q And when you arrived at Luna Lounge, was Lieutenant
5 Gostisha there?

6 A Yes, he was.

7 Q Did he then give you a different assignment or did
8 you stay there?

9 A No. I was there for a very short period of time.

10 Q And what -- where did you go then?

11 A I was directed down to Theda Clark where the victim
12 was at.

13 Q And was -- were medical -- was medical treatment or
14 intervention being attempted on Mr. Richards?

15 A At Theda Clark, yes.

16 Q And you're aware his name is Joshua Richards?

17 A I do.

18 Q Ultimately did you, through that contact at Theda
19 Clark, learn what was going to be the prognosis for
20 Mr. Richards?

21 A I did.

22 Q What was that?

23 A There was multiple medical staff on scene. I was
24 told both at the scene by investigators and then by
25 medical staff that he had received a single gunshot

1 wound to the side of the head, the left side of the
2 head. The wound was right almost touching the ear,
3 real close to the left ear, that there was not an
4 exit hole. I saw there were some x-rays that had
5 been done, and I saw the wound cavity going through
6 the head, and the prognosis was that he was not going
7 to survive.

8 Q And related to this case, if I can just ask this
9 question before we walk through it, was any potential
10 gun ever recovered?

11 A Not recovered, no.

12 Q So in any -- if anyone said they read or heard in the
13 news that a gun was located in the case, that would
14 be accurate or inaccurate?

15 A Inaccurate.

16 Q As the case began then on that Sunday, I'm going to
17 say, do you remember becoming aware that there was
18 some video images from Luna?

19 A Yes.

20 Q Was that a focus that investigators used or focused
21 on initially?

22 A Yes.

23 Q Were those -- I want to say it this way. Were the
24 primary duties for reviewing that assigned to one
25 officer?

1 A Yes.

2 Q Who was that?

3 A Sergeant Neal Rabas.

4 Q Despite the primary duties being assigned to Sergeant
5 Rabas, at some point was it a process where all of
6 the investigators were involved in reviewing that
7 video?

8 A We were trying to determine who some of these people
9 were.

10 Q And how was that done?

11 A We reviewed -- the video was turned into stills and
12 the stills were put into a -- we call it the fish
13 bowl, a place where we get together to look at cases,
14 and we looked at them.

15 Q And you call it the fish bowl because it's glass
16 windows all around?

17 A Every time you go in there people just stare at 'ya.

18 Q So you ended up putting up still images from the
19 video?

20 A Correct.

21 Q And then what was done?

22 A Well, we started looking at them, trying to figure
23 out who these people were.

24 Q And ultimately, through that process, were you able
25 to identify some of the people that were involved in

1 this incident?

2 A Yes.

3 Q Okay.

4 ATTORNEY SCHNEIDER: May I approach?

5 THE COURT: You may.

6 ATTORNEY SCHNEIDER: Sorry I asked. Habit.

7 THE COURT: That's quite all right.

8 ATTORNEY SCHNEIDER: I haven't done it in a
9 day or two.

10 A Is this for me, by the way?

11 Q Yes. That is fresh for you.

12 I'm going to show you what's been marked State's
13 Exhibit No. 32, and it is a series of -- this
14 actually is not a good place. We have two big
15 exhibits.

16 Eleven photos on Exhibit 32, correct?

17 A Yes.

18 Q And they range from letters 32A through 32K, correct?

19 A Correct.

20 Q Is this similar to what was - I'm going to use your
21 word - kind of posted or up in the fish bowl where
22 you had still images and attempting to identify
23 them?

24 A Yes.

25 Q Okay. Was there also a different sequence in the

1 video that was utilized to try to focus and identify
2 people?

3 A Yes. There's really two. There was people coming
4 in, and then after the shooting people leaving, and
5 showing obviously the speed that they were going at
6 and who they were with, and you could also see
7 direction, a little bit of a direction of travel once
8 they got through the outside doors.

9 Q So through those two, I'm going to say, like the two
10 images, people entering and then the exit sequence,
11 were people -- were you able to start identifying
12 individuals?

13 A Yes.

14 Q Okay. And from what you became aware of, you're
15 familiar there is kind of a mass exodus of people
16 right after the time of the shooting?

17 A Correct.

18 Q Did any of those people, kind of the initial groups
19 you looked at, stay at the scene?

20 A Did -- can you say that again please?

21 Q Kind of the initial mass exodus of people?

22 A Right.

23 Q Did any of those people remain at the scene when
24 officers had arrived as far as you know?

25 A No, not that I'm aware of.

1 Q It wasn't that they were around where people could
2 start identifying them or talk to them?

3 A No.

4 Q Okay. Did this case in that day, that Sunday into
5 Monday, if you know, Sergeant Schira, result in a lot
6 of citizens calling in who had been witnesses?

7 A No. No. It didn't.

8 Q Did the department, though, take the time or steps to
9 try to talk to the people who were at Luna when they
10 arrived?

11 A Yes, we did.

12 Q Were you at Luna long enough to go into the bar?

13 A I was there long enough to see that it was -- yeah,
14 that there was investigators there, that they were
15 trying to identify people, they were taking pictures
16 and just doing a lot of things to make sure that we
17 could identify everyone that was there.

18 Q And this is now after bar close?

19 A Yes.

20 Q Was it a happy crowd that was there waiting and
21 trying to talk to officers?

22 A As bad as going to the hospital was with Josh, that
23 was also a pretty bad position to be in for an
24 investigator.

25 Q People -- I'm sorry. I won't even ask. Do you

1 remember who you might have had first contact with
2 related to this case?

3 A I think it was Josh.

4 Q Okay. And ultimately, as part of this case, you
5 learned Mr. Richards did not survive, correct?

6 A I did.

7 Q As you then began to try to identify people in the
8 photographs, who did you first have contact with
9 then?

10 A The first person that I had contact with after
11 looking at the photographs that you showed was Phong
12 Lee.

13 Q Do you remember what date that happened on?

14 A That would have been I believe on Monday the 9th.

15 Q And where was that?

16 A Here at the -- this facility.

17 Q Was anyone with you?

18 A Myself and Sergeant Tauber.

19 Q And did you speak to Phong on that day?

20 A I did.

21 Q When you initially spoke with him, did you ask him
22 about being at Luna?

23 A I did.

24 Q How did he respond?

25 A He told me that he was there, that he had left before

1 there was any incidents or anything going on. He
2 repeatedly lied to me. Obviously I had the pictures
3 and I knew that he was inside when the shell hit
4 Josh.

5 Q By that point had he been identified in kind of that
6 sequence of people who had exited?

7 A He was.

8 Q On that date did you gather a lot of information from
9 him?

10 A It was a good start.

11 Q In your past experience have you had to interview
12 witnesses on more than one occasion?

13 A Many times.

14 Q How does that happen?

15 A Well, it's a process. When we interviewed Phong,
16 obviously he was -- he was nervous and he knew that
17 -- knew that we were asking very specific questions.
18 He repeatedly, like I said, said that he had left
19 prior to the incident, said that he had walked home.
20 You know, we just knew that that just wasn't true.

21 Q In addition to the Luna video, by this point had you
22 gathered any other videos that show you where parties
23 went?

24 A Yes.

25 Q If you can give the jury some examples of what else

1 you reviewed.

2 A Appleton has a pretty good system of exterior cameras
3 that are on street corners for traffic control
4 reasons. Several of those cameras picked up Phong
5 and two other individuals that ran from the scene,
6 ran westbound on College Avenue, on the corner of
7 Division and College and then ran northbound on
8 Division.

9 Q And then were you able to follow them in some extent
10 even from that next intersection which I think would
11 be Washington?

12 A Yes.

13 Q And is there a camera up by Franklin and Division?

14 A Yes.

15 Q And that corner, not everybody always knows the names
16 of the streets, but that's where the Appleton Post
17 Office is, correct?

18 A Yes, ma'am.

19 Q Did you talk to -- did you specifically talk to Phong
20 on more than one occasion?

21 A No, I only spoke with Phong on one occasion.

22 Q Why is it a situation that you might have to go back
23 and talk to someone a second time?

24 A We try to -- you know, when we speak to people, we
25 are looking for information, we're looking for facts,

1 and what we're trying to do is be able to corroborate
2 and follow up, verify things that they told us.

3 Q Is it something sometimes that you need to go back
4 and talk to them again because of that?

5 A Yes.

6 Q In essence, for many people in a case, do you ever
7 consider that you have a final interview with a
8 person?

9 A You know, it's difficult because it seems like every
10 time you talk to somebody they come up with a little
11 bit of more information or you find out what they
12 were telling you wasn't true and you have to explain
13 to them that there's consequences when you lie.

14 Q Some people share with you everything they know the
15 first time?

16 A No.

17 Q And as part of this investigation, Sergeant Schira,
18 was the entire investigative unit at some time or in
19 some way working on the case in different
20 capacities?

21 A Yes.

22 Q And were you tracking down not just one potential
23 witness but multiple witnesses?

24 A Correct.

25 Q And over those next few days, did that all just lead

1 to you staying here in the Fox Cities area?

2 A Myself, yes. Other investigators went to outside
3 areas.

4 Q Okay. Do you remember who you had contact with after
5 Phong?

6 A There's a list. It started with Phong that evening.
7 Then, after that conversation and identifying some
8 additional people through Neal's hard work, I ended
9 up going over to Little Chute and I made contact
10 with -- would you like me to list them?

11 Q Sure.

12 A Lisa Stutzman, Bobby Jo Stutzman, Ricky Chang, and
13 Joe Thor.

14 Q And did Miss Stutzman speak to you?

15 A Lisa did, yes.

16 Q And Joe Thor, did you speak to him on December 9th?

17 A I did.

18 Q When you went to that address in Little Chute, was
19 there a person you were expecting or possibly looking
20 to find there?

21 A Yes.

22 Q And who was that?

23 A We were also looking to speak with a Hu Lee.

24 Q Were you planning to see Joe Thor at that Little
25 Chute address?

1 A No.

2 Q When you saw him had he been identified in those
3 photos from Luna yet, if you know?

4 A I believe he -- actually, yes, he was.

5 Q And where did you speak to him on this day?

6 A Unfortunately outside for the first part of the
7 conversation, and then the second part was inside.

8 Q Was it cold outside?

9 A It was terribly cold.

10 Q Was anyone else near you while you were speaking to
11 Joe?

12 A Investigator Cary Meyer was also with me, but there
13 was an incident that kind of occurred there that
14 required him to -- to separate himself from me for a
15 little bit.

16 Q Okay. And when you spoke with Joe on this day, did
17 you ask him about Luna?

18 A I did.

19 Q What did he initially tell you?

20 A He surprised me in the sense that I was speaking with
21 Bobby Jo Stutzman and she had just identified some of
22 the people in the photographs that you showed us,
23 additional people that were there. And the door
24 opened behind me and Joe -- well, she said something
25 about, hi, Joe, and then the door closed. And I

1 said, is that Joe Thor, and she said, yes, so I
2 actually had to run outside because he was trying to
3 get out of there before he had contact with me.

4 Q Okay. Bobby Jo Stutzman was able to identify people
5 in the photos that you had?

6 A Lisa Stutzman and Bobby Jo.

7 Q Did you ultimately learn how Lisa was connected or
8 involved with Hu Lee?

9 A I was.

10 Q And how was that?

11 A Boyfriend/girlfriend. I believe they have children
12 together.

13 Q And overall, as part of this investigation, have you
14 learned how Hu Lee is connected to Chong Lee?

15 A I have.

16 Q And what's that connection?

17 A Brother.

18 Q When you went to speak to Mr. Thor then, did he stay
19 and speak with you?

20 A He did.

21 Q Did you then ask him about Luna?

22 A I did.

23 Q And what did he tell you initially?

24 A He told me nine times that he was not there, and nine
25 times I told him I think you were there, I have

1 photographs. As a matter of fact, I had the
2 photographs in my binder that I had in my hand. And
3 he repeatedly told me that he was not there, that he
4 was in Milwaukee.

5 Q Did you ever pull out any of the photographs to show
6 him?

7 A I did.

8 Q When you did so, did his position on whether he was
9 in Milwaukee change?

10 A He did. He actually -- we had gone back inside. I
11 had my binder open, and I actually opened up my
12 binder and I had the pictures on top of my binder,
13 and he's sitting right across the table from me, less
14 than a foot-and-a-half, two feet away, and the
15 pictures are just sitting there and I'm looking at
16 him thinking, why do you continue to lie to me.
17 You're right there.

18 Q Did you specifically have the image where he was on
19 those photographs?

20 A Yes.

21 Q Did he ultimately identify himself in those photos?

22 A He did.

23 Q Did he identify anyone else?

24 A He did.

25 Q Who else if you remember?

1 A Phong Lee and Paul Lee.

2 Q At that time, Sergeant Schira, did you show him a
3 picture of the person you knew -- well, let me ask
4 you this first. Did you know in that series of
5 photos you had was there a picture of Chong Lee?

6 A There was.

7 Q Did you know that it was Chong Lee in the photo at
8 the time you were speaking to Mr. Thor?

9 A I did.

10 Q Did you show him that photo?

11 A I did.

12 Q Did he identify Chong Lee?

13 A He said he -- he couldn't tell who it was.

14 Q And were those photos of the people running out or
15 coming -- when they first were entering?

16 A I believe I had both sets of in and out.

17 Q And you ultimately have learned that the cameras at
18 Luna, I've been calling them night vision, I don't
19 know if that's the best term, or infrared, but they
20 don't show color at all, correct?

21 A Yeah. Not only do they not show color but they
22 actually -- you can have the same color but different
23 material and it will transflux (sic) the colors, so,
24 yeah, you can't tell anything by the color.

25 Q And in many of the images the Appleton Police

1 Department's uniforms and even their outer exterior
2 clothing are all like a really dark navy blue,
3 correct?

4 A Correct.

5 Q But when we see officers in those, that often looks
6 white or gray?

7 A May I -- I just remembered something. I think I just
8 told you that I -- that I showed you pictures of -- I
9 showed pictures to Joe of Chong. I don't believe I
10 did then. I believe I did it the following day, that
11 next interview.

12 Q Okay.

13 ATTORNEY VISHNY: Okay. Can I approach the
14 bench please?

15 THE COURT: You may.

16 (Bench conference.)

17 ATTORNEY VISHNY: So, Judge, the objection
18 is sustained?

19 THE COURT: Sustained.

20 Q (BY ATTORNEY SCHNEIDER) When Joe Thor, when you
21 first met with him on December 9th, when he told you
22 he wasn't at Luna, did you just stop talking to
23 him?

24 A No.

25 Q Why not?

1 A Because this is a homicide investigation, and many
2 times, as we talked about earlier, sometimes people
3 don't want to talk to you.

4 Q You said he told you nine times he wasn't at Luna?

5 A I'm sure it's either eight or nine, but I think it's
6 nine.

7 Q At what point did you pull out the photos that you
8 had?

9 A We had gone inside, we had asked Lisa and Bobby Jo if
10 we could come inside, obviously they're friends with
11 Joe, and we had gotten into their kitchen area. We
12 were seated at a table in their kitchen.

13 Q Did you feel when Mr. Thor told you he wasn't at Luna
14 it was appropriate for you just to kind of hold up
15 your binder, I think you said, and walk away?

16 A Of course not. I was hired to investigate, to
17 protect my community, and sometimes people lie to you
18 and you just have to, you know, you have to seek the
19 truth, you have to seek information.

20 Q Ultimately when you're meeting with Joe on that day
21 and then he now has told you he was at Luna, did you
22 ask him why he lied?

23 A I did.

24 Q What did he tell you?

25 A He said that he was scared.

1 Q Did he describe anything that had happened at Luna?

2 A He did. He described the confrontation.

3 Q Did he describe who that was with?

4 A He did.

5 Q Who was that with?

6 A He stated that he was with Paul Lee, Phong Lee and
7 himself and that there was a verbal altercation
8 between -- I believe he said it was Phong Lee first
9 and Josh and then turned into Paul Lee and Josh.

10 Q When you spoke to him on the 9th, did you ask him
11 specifically about the time of the shooting?

12 A I did.

13 Q What did he tell you?

14 A He actually stood up because I -- I said that we
15 believed -- he said that he was very close, that he
16 was -- he was very upset when he was talking to me.
17 He actually stood up and he kind of mimed like the
18 distance of how close we were, and I stood up with
19 him and we were probably within our reach, about a
20 three-foot reach, and he stated that he heard the
21 bang. That's what he said. I always thought that
22 was weird because you say you hear the bang but he
23 said -- he was very adamant and even made like a
24 motion like miming like a bullet hitting a person in
25 the head.

1 Q When Mr. Thor was describing that, what was his
2 demeanor?

3 A Agitated, upset.

4 Q Did he describe hearing anything other than the --
5 I'm sorry, this was a bad question. Did he describe
6 seeing anything around the time he heard the bang?

7 A He said he saw the bang and he mentioned something
8 about the flash, the muzzle flash.

9 Q From your training and experience, muzzle flash, were
10 you aware of the lighting condition at Luna at that
11 time?

12 A I've worked downtown College Avenue occasionally and
13 have been in the bar numerous times.

14 Q Would that -- knowing the lighting condition, would a
15 flash from like a muzzle appear to be pretty bright
16 for at least a moment of time?

17 A It would.

18 Q Did Joe tell you what he did after he saw the
19 flash?

20 A He said he ran.

21 Q Did he tell you if he saw anything related to Josh?

22 A He saw Josh fall, and he basically said he fell on
23 his feet.

24 Q Did he tell you where if anywhere he was focusing
25 when he heard the bang?

1 A He stated that he was behind -- I believe he said he
2 was behind Paul and that Phong was maybe stacked off
3 one of his shoulders but he wasn't real sure at that
4 time, and that he was looking at Josh, and again, he
5 had mimed the bullet hitting him, so he's focusing in
6 right on Josh's face.

7 Q Did he tell you if, and I don't know if you even
8 asked, but did you try to determine if Paul was to
9 his right or to his left?

10 A I believe he said that Paul was actually in front of
11 him.

12 Q And it -- I think you already answered that, but he
13 didn't really know where Phong was?

14 A Correct.

15 Q And he said after he heard the noise he ran?

16 A Correct.

17 Q And from what you saw at Luna, did you know that to
18 be accurate?

19 A It was.

20 Q And in fact Mr. Thor wasn't the only person who ran
21 from Luna?

22 A Correct.

23 Q I described it as kind of a mass exodus. There were
24 several people who ran?

25 A Correct.

1 Q Were there people who ran who, based upon your
2 investigation, didn't even see what happened?

3 A I found it interesting that the majority of the first
4 group of people that were out the door were in fact
5 Joe, Paul and Phong.

6 Q Did Joe tell you after he heard the bang if he
7 hesitated at all?

8 A I believe he said he ran almost immediately.

9 Q [Did he ever] tell you he was scared after he heard
10 that bang?

11 A Repeatedly.

12 Q Did you talk to him -- or how long did you speak to
13 him on that day?

14 A That was about it. Like I said, there was Ricky
15 Chang and some other individuals had come in. They
16 were very clear that they were trying to get Joe out
17 of there, that he wouldn't talk to me, and it got to
18 the point that we had to actually leave because we
19 thought we were going to have a problem there.

20 Q Had Joe been asking you to leave?

21 A No. Joe was actually very decent. As a matter of
22 fact, he said that he would -- he would talk to me
23 the next day, that he was going to be here and said
24 he would come and see me when he was done.

25 Q So he told you where he was going to be that next

1 day?

2 A He did.

3 Q And obviously you know the courthouse is -- well, the
4 jury may not know this. Where is the Appleton Police
5 Department located?

6 A It's actually just across the parking lot right next
7 door.

8 Q So the buildings are next door to each other?

9 A They are.

10 Q And Mr. Thor knew this?

11 ATTORNEY VISHNY: Object. Never mind.

12 Q (BY ATTORNEY SCHNEIDER) Did you make contact with
13 Joe then on December 10th?

14 A I did.

15 Q And where did you have contact with him?

16 A In the parking lot.

17 Q And did he agree to come speak with you?

18 A He did.

19 Q Who was with you on that occasion?

20 A There were, I believe, two or three officer from CRU,
21 and I also believe that Sergeant Rabas, I don't know
22 if he was with me in the parking lot but he met us, I
23 think, coming back.

24 Q On that date then did you continue to speak to Joe
25 about what happened at Luna?

1 A We did.

2 Q On that date did he tell you -- did he again express
3 that he was scared?

4 A He did.

5 Q On that date did you specifically ask him who might
6 have been the shooter?

7 A I did.

8 Q What did he say when you asked that?

9 A He said he didn't know repeatedly.

10 Q Did he ever identify that it was Paul?

11 A No.

12 Q Did he ever say it was not Paul?

13 A He did, in a sense that we pressed him on information
14 that we had gotten through the photographs why we
15 were looking at Paul. We had identified also that --
16 that Phong was there. And myself and Sergeant Rabas
17 continually asked him about that, about who the
18 shooter could be.

19 Q And did he deny being the shooter himself?

20 A He did.

21 Q And I think you've already said he indicated at some
22 point it was not Paul?

23 A Correct.

24 Q Did he ever indicate during this interview that it
25 was or was not Phong?

1 A I believe so, yes.

2 Q That it was not or was?

3 A Was not.

4 Q And on that interview on the 10th with Mr. Thor did
5 you gain more information from him about what he knew
6 or saw?

7 A Yes.

8 Q Like the previous day, were there other citizens or
9 friends of his present or milling around while you
10 were speaking to him?

11 A No. This was done at the Appleton Police
12 Department.

13 Q So there was nobody interrupting you?

14 A Correct.

15 Q Did you try to get him on that date to focus on
16 anything else he recalled about the moments before or
17 the time right before the shot?

18 A He -- he got into more specifics on the
19 altercation.

20 ATTORNEY VISHNY: I'm sorry. I couldn't
21 hear the answer.

22 ATTORNEY SCHNEIDER: I think we were
23 rattling chairs back here. I didn't hear it
24 either.

25 A I'm sorry, ma'am.

1 Q He got into more details about the --

2 A The altercation.

3 Q Oh, the altercation. Did he ever express to you that
4 he heard any words said preceding the shot?

5 A When speaking with Paul, you know, he --

6 Q I'm talking about Joe.

7 A I'm sorry. When speaking with Joe, he wasn't real
8 specific on how it started.

9 Q Maybe that was a bad question. Did he ever say he
10 heard anybody call out like gun or I got a gun, any
11 comment like that?

12 A No.

13 Q And over the next several days -- well, let me ask
14 you this. When you talked to him on the 10th, did
15 you try to focus on if you saw anything relevant to
16 who could have been the shooter?

17 A Yes. We specifically asked if he had seen any
18 additional information. We kind of focused on Paul,
19 and he was adamant that he just didn't believe it was
20 Paul that did the shooting.

21 Q Did he describe seeing anything near Josh's head at
22 or near the time of the shot?

23 A I believe there was a punch thrown nearly
24 simultaneously with the gunshot.

25 Q That's what he thought?

1 A Yes.

2 Q Over the next -- let me just get -- let me have one
3 second. Actually, I'll continue moving on.

4 Over the next several days as the 10th then
5 spilled into the 11th, it might seem like an odd
6 question, but how many hours in a day were you or
7 other investigators working on this case in those
8 days after?

9 A We were putting maximum effort into it.

10 Q Is it a time where you worked through nights?

11 A Yes.

12 Q And were people on that board continued to be
13 identified?

14 A Yes.

15 Q And were some of those parties -- were there attempts
16 made to locate or speak to those people?

17 A Yes.

18 Q And during those next several days, did any other
19 calls come in with anybody else who was a citizen who
20 had information to share with you at all that you
21 remember?

22 A Not that I'm aware of.

23 Q I want to focus on December 11th then, that would be
24 Wednesday. Do you remember, Sergeant Schira, where
25 you were during the evening hours?

1 A I think I was at home.

2 ATTORNEY VISHNY: I'm sorry. The date?

3 ATTORNEY SCHNEIDER: December 11th.

4 ATTORNEY VISHNY: Okay.

5 Q (BY ATTORNEY SCHNEIDER) Did you come to the police
6 department the night of December 11th?

7 A I was called back in, yes.

8 Q During that day when you were working on the case
9 with others, what became something that was of focus
10 for you as an investigative team?

11 A It looked like something was in Paul Lee's hand.

12 Q And that was done through examining that Luna
13 video?

14 A The Luna video and then obviously the stills from
15 that Luna video.

16 Q You said later that night you were called back into
17 the police department?

18 A Yes, ma'am.

19 Q Why?

20 A For follow-up interviews assisting some of the other
21 investigators.

22 Q And when you were called in, had you become aware
23 officers had spoke to Paul?

24 A Yes.

25 Q And that was at what location?

1 A Where he worked. I believe it's called Norka.

2 Q I think, just for the court reporter, I don't know if
3 we told you this, it's N-O-R-K-A.

4 So officers found Paul at work that night?

5 A They did.

6 Q Were you involved with any tasks or duties at
7 Norka?

8 A No.

9 Q So you responded back to the police department?

10 A I was -- I didn't go anywhere else.

11 Q At the time when you went back to the police
12 department, did you know where Sergeant -- and I'll
13 say their first names and last, Sergeant Cary Meyer
14 or Sergeant Dan Tauber were?

15 A I was told that they were either in Milwaukee or
16 either en route coming back.

17 Q Do you know why they had gone to Milwaukee?

18 A Follow-up interviews -- or maybe not follow-up
19 interviews but interviews.

20 Q Ultimately did you learn who they spoke to?

21 A I really don't have a lot of information on the
22 Milwaukee investigations.

23 Q Okay. That night do you -- and maybe I'll say it
24 this way, do you know if they went to speak to a
25 female or a male, if you know?

1 A I believe they went to speak to a female.

2 Q And at some point was information they had shared
3 with the lieutenant or yourself?

4 A At that time I believe that information was shared
5 with the lieutenant but not with me.

6 Q Was there a specific request made of you or a
7 specific task assigned to you when you were at the
8 police department that night?

9 A Yes.

10 Q What was that?

11 A I was told by Lieutenant Gostisha to assist Sergeant
12 Thao with an -- an interview of Paul Lee.

13 Q And when you went to do that, did you know if he had
14 been spoken to earlier in the night?

15 A I knew that they had made contact with him at his
16 place of business, but I don't know if there was an
17 interview done, I didn't -- I wasn't sure what had
18 happened there.

19 Q Did they -- were you given any specifics about what
20 he said or didn't say at the interview at Norka prior
21 to you going to speak to him?

22 A No.

23 Q Did Sergeant Thao share with you any facts or
24 information he knew from speaking to Paul at Norka?

25 A No. The only one that talked to me about -- prior to

1 me interviewing Paul was Lieutenant Gostisha.

2 Q And what did you learn from him?

3 A He told me that there was additional information that
4 had come in that Chong Lee was the shooter.

5 Q So you knew that prior to the time you went in to
6 talk to Paul?

7 A I did.

8 Q Do you remember what time you went in to speak to
9 Paul?

10 A It was shortly after midnight. I'm not sure what
11 time.

12 Q And I think there is some things we'll agree to, but
13 if I told you the first interview started
14 approximately 12:41 a.m., would that sound right?

15 A Yes.

16 Q Do you remember, Sergeant, how long that interview
17 with Mr. Lee lasted?

18 A We had two interviews with him. I believe the first
19 one was an hour and fifteen minutes roughly.

20 Q And what was the time of the second interview, if you
21 know?

22 A The second interview didn't happen until well into
23 the following day, I want to say it was around 11:00
24 or so.

25 Q You had an interview with him 12:41 a.m. and then

1 about 11 a.m.?

2 A Correct.

3 Q Was Mr. Lee at the police department that entire
4 time?

5 A He was.

6 Q While he -- and if you know, while he was there, was
7 he given access to make any phone calls?

8 A No.

9 Q Had -- when you went in to meet with Mr. Lee, just to
10 give the jury a -- an understanding of Paul Lee, were
11 you in a uniform or in plain clothes?

12 A I was in just a -- an Appleton polo shirt.

13 Q And introduce yourself?

14 A I did.

15 Q And you spoke with him?

16 A I did.

17 Q During that time when you spoke with him, did you ask
18 him if he was the shooter?

19 A I did.

20 Q More than once?

21 A Yes.

22 Q What did he say?

23 A That he was not.

24 Q Did his position on that ever change?

25 A No.

1 Q Prior to going in, did you and Sergeant Thao talk
2 about a script or anything, points or items you
3 wanted to make sure you spoke with Paul Lee on?

4 A No.

5 Q Were there any comments Sergeant Thao made to you
6 about Paul or his family before the interview?

7 A No.

8 Q When you went into the interview, were you aware if
9 he had any siblings?

10 A I did know that, yes.

11 Q Did you know the relationship between Chong and
12 Paul?

13 A Yes.

14 Q During that time when you spoke to Paul, did you ask
15 him if Joe was the shooter?

16 A I don't recall.

17 Q [Did he ever] indicate to you in any time you spoke
18 to him that Joe was the shooter?

19 A He did not.

20 Q What about Phong?

21 A He did not.

22 Q Meaning he did not ever indicate he was the
23 shooter?

24 A Correct.

25 Q During this time when you're speaking to him, did you

1 ask him about -- well, let me ask you this. How did
2 the name Chong get brought up in the interview?

3 A I was speaking with him for a while, I don't know,
4 maybe five, ten minutes, something along those lines.
5 And then Chue was speaking with him and Chue -- Chue
6 Lee Thao, detective, started talking to him about
7 specifically who was there, who was -- who were with
8 you when you were downtown, and he went through
9 names, and he went through that Phong was there, he
10 went through that Joe Thor was there, he went through
11 some other names, and to me this was interesting
12 because I had already known that we had tried to --

13 ATTORNEY VISHNY: I want to approach the
14 bench at this point.

15 ATTORNEY SCHNEIDER: Okay.

16 (Bench conference.)

17 THE COURT: Five-minute restroom break and
18 then we'll be all set.

19 (The jury was escorted out of the
20 courtroom.)

21 ATTORNEY SCHNEIDER: Sergeant Schira, go
22 ahead and take a seat. There was just -- you were in
23 the middle of an answer, and do you want the court
24 reporter to read the question back? I just think
25 Attorney Vishny had some concerns about how you might

1 respond so instead of letting you respond and trying
2 to move to strike, I think we just want to know --

3 THE WITNESS: I don't have -- I've already
4 forgotten the question so please can you read it
5 back.

6 (Question and answer read back.)

7 ATTORNEY SCHNEIDER: How were you going to
8 finish your answer?

9 THE WITNESS: Identify Chong as being there
10 because I had -- should I continue?

11 ATTORNEY VISHNY: Yeah.

12 ATTORNEY SCHNEIDER: Go ahead.

13 THE WITNESS: Because I had already talked
14 to Phong who didn't identify him, I had talked to Joe
15 Thor who didn't identify him, and we knew from the
16 pictures as well as Lisa Stutzman's statement that he
17 was there, so I thought it was interesting that they
18 were not picking him out.

19 THE COURT: Okay.

20 ATTORNEY SCHNEIDER: I don't know if there
21 is a continuing objection otherwise.

22 THE COURT: Does that objection stand? I
23 don't know that -- I don't know that the concern
24 raised was what you thought, but in light of now what
25 you know, does that --

1 ATTORNEY VISHNY: Well, yeah, it's the
2 exact same thing because it's exactly that. He
3 interviewed -- maybe he didn't interview Phong, but
4 Phong didn't ID the picture, I don't know who did it
5 off the top of my head, but it's the exact same
6 thing, that he had interviewed Joe and shown the
7 picture and Joe hadn't identified him. The same
8 hearsay objection that I made before.

9 ATTORNEY SCHNEIDER: Maybe I can --

10 THE COURT: But I guess I don't know that I
11 agree because that's -- it's not suggestive that he
12 showed him a picture and he didn't identify it, it's
13 just saying he didn't identify it.

14 ATTORNEY VISHNY: Well, I'm -- I'm assuming
15 that he showed him the picture, asked Joe a question,
16 and Joe gave a verbal response.

17 ATTORNEY SCHNEIDER: We're talking about
18 Paul's interview now?

19 ATTORNEY VISHNY: Right. But he's talking
20 about his own state of mind. He finds it interesting
21 as Sergeant Thao is saying who was there, who was
22 there, who was there, he's saying, if I get what
23 Sergeant Schira said, what he's saying is I found
24 this interesting because when he, Sergeant Schira,
25 talked to Joe and Joe knew the picture, Joe hadn't

1 identified the guy, and I don't know if it's Sergeant
2 Schira or a different officer, I don't remember,
3 talked to Phong and then showed Phong the picture,
4 Phong didn't identify him.

5 THE COURT: I don't think he said -- I
6 don't think he referenced the picture. I don't think
7 he referenced that there was any affirmative conduct
8 which led to a negative identification. I don't
9 think the answer, at least as it's presented, brings
10 into the potential -- there is a lot of inferences
11 that could be made. It could be he never showed
12 them. I am inclined at this point to allow it in.

13 ATTORNEY VISHNY: Okay. Then I just want
14 to be overruled on the record.

15 THE COURT: You're overruled.

16 ATTORNEY VISHNY: Thank you.

17 ATTORNEY SCHNEIDER: Good luck trying to
18 answer the same.

19 THE WITNESS: You know, now I don't even
20 know what we're talking about anymore. I'm just
21 worried that this chair is gonna flip me over
22 backwards. Right?

23 THE COURT: Do you need a minute or two?

24 THE WITNESS: No. I'm good to go.

25 ATTORNEY SCHNEIDER: I'll have her reread

1 the question and where you stopped your answer,
2 outside, and then we'll pick up from there if that's
3 okay when you return.

4 THE COURT: Two-minute bathroom break.

5 ATTORNEY SCHNEIDER: Okay.

6 (Court in recess.)

7 (The jury was escorted into the courtroom.)

8 THE COURT: Please be seated. And then,
9 Miss Schneider, do we need where we left off?

10 ATTORNEY SCHNEIDER: Yeah, because I don't
11 think with the break I'm going to remember so I'm
12 just going to ask the court reporter to read the
13 question and then read where he stops his answer.

14 Q (BY ATTORNEY SCHNEIDER) And then, Sergeant Schira,
15 I'll just ask you to continue your answer.

16 (Question and answer read back again.)

17 A Identify Chong through interviews of both Phong Lee
18 and Joe Thor, and they were both shown pictures
19 during those interviews and they identified obviously
20 themselves, they identified Phong and Joe and Paul as
21 being there.

22 Q Okay. So let me ask you this, Sergeant Schira.
23 During the December 9th interview with Joe Thor was
24 Chong's name ever brought up?

25 A The first one, no.

1 Q On December 10th was Chong's name brought up?

2 A It was.

3 Q How was that brought up?

4 A We asked him if he was there, we showed a picture and
5 asked who is this. I take that back. His name was
6 not brought up. We showed him the picture of Chong
7 because we're trying to verify information to see if
8 they're going to tell us who actually is there, and
9 Joe said that was -- I believe actually said that was
10 somebody by the name of Kang, but said it was fuzzy,
11 I think it might be Kang, but he would not identify
12 it as Chong.

13 ATTORNEY VISHNY: I'd object to this.
14 Would not identify. He doesn't know what's in Joe
15 Thor's mind and nobody asked him that question. We
16 know he didn't identify him.

17 THE COURT: Sustained. Stricken, that
18 portion of the question.

19 Q (BY ATTORNEY SCHNEIDER) Were you ever able to
20 identify Chong in that photo?

21 A I did not.

22 Q During the interview with Phong on December 9th was
23 Chong's name ever brought up?

24 A Not his name but again the picture was.

25 Q Okay. So the name -- to lay kind of the framework,

1 you -- Sergeant Thao had asked -- Sergeant Thao had
2 asked who was there, who was with him, and Paul
3 identified Phong and Joe Thor and some other names.
4 Did Sergeant Thao follow up?

5 A He did. He -- it was like a natural break in the
6 conversation after asking who was all there, and
7 Chong did -- check that. Paul did not give us a
8 name. So what Chue did is Chue said, how about
9 Chong, was Chong there. And Paul kind of sat -- sat
10 upright and then changed, I forget specifically what
11 he said, but he kind of brought up someone else,
12 maybe it was Tom or someone else, and Chue brought
13 him back to it and said, no, was your brother Chong
14 there, and he said, I don't know, I don't know.

15 Q Did his demeanor change at that time?

16 A It did.

17 Q When the name -- when the name Chong was first
18 brought up with Paul, were you specifically focusing
19 on Paul, were you trying to take notes, what were you
20 doing?

21 A I was -- at this point we kind of switched off. I
22 had been -- I had been interviewing Paul, and then
23 when Chue started talking, I was looking -- I was,
24 you know, it's on video, I was looking directly at
25 Paul, I was looking right at his face, I was very

1 close to him, and when Chue brought up the name
2 Chong, was Chong there, I distinctly saw something
3 happen to his face.

4 Q Okay. Do you continue to ask about Chong?

5 A Chue does.

6 Q And at that point did Paul ever indicate Chong was at
7 Luna?

8 A Eventually, yes.

9 Q Did you talk with him about -- or prior to saying
10 Chong was at Luna, did he talk about being scared?

11 A He -- he did. I mean, he said, you know, that the
12 entire situation upset him and that he was scared.

13 Q Did he ever express any concerns about talking about
14 Chong?

15 A Yes.

16 Q What did he say?

17 A Specifically that he didn't -- I believe what he said
18 was, I don't want my brother to hate me, or my
19 brother's gonna hate me.

20 Q And at the time you're talking about this, what's the
21 tone?

22 A With Chue, it's very, very soft.

23 Q Did they ever talk in Hmong at all?

24 A They did.

25 Q Do you understand Hmong?

1 A I do not.

2 Q So you don't know what was said if they did?

3 A Not specifically.

4 Q Was it a lengthy period of time?

5 A No, there was just -- just seemed like occasionally
6 maybe one or two Hmong words would be kind of slipped
7 in. I mean 99 percent of it was in English.

8 Q Did -- was Paul specifically asked about what
9 happened with the gun?

10 A Yes.

11 Q What did he say?

12 A I guess I'd like clarification as far as what part of
13 the conversation.

14 Q Okay. At some point Chong describes his brother
15 being at Luna?

16 A Correct.

17 Q Does Paul at some point --

18 ATTORNEY VISHNY: I think you meant to say
19 at some point Paul describes his brother at Luna, you
20 said at some point Chong.

21 ATTORNEY SCHNEIDER: Chong? Okay.

22 Q (BY ATTORNEY SCHNEIDER) So at some point Paul admits
23 or confirms with you that Chong was there, correct?

24 A Correct.

25 Q Do you remember asking him specifically if Chong had

1 done the shooting?

2 A Yes.

3 Q What did he say?

4 A He said Chong was the shooter.

5 Q And prior to giving that answer, were either of you
6 yelling at him?

7 A No.

8 Q Were either of you raising your voice?

9 A My voice might have been a little hard, yes.

10 Q Did you ultimately ask him if -- if -- did you
11 ultimately ask Paul if Paul knew what Chong had done
12 with the gun?

13 A I did.

14 Q What did Paul say?

15 A At that point he didn't know.

16 Q Did you ask Paul how he knew Chong was the shooter?

17 A I did.

18 Q What did he say?

19 A During this interview he said there was -- because
20 there was two interviews, during this interview he
21 said that Chong had come to his house sometime on
22 Monday and said that he had fucked up, pardon my
23 language, and that he had shot the guy.

24 Q During the time you spoke to Paul on this date, did
25 he say that once or more than once?

1 A Several times.

2 Q During the -- the time you were talking to Paul, did
3 you ask him -- and I might have asked you this so I
4 apologize -- if he was the shooter?

5 A Yes.

6 Q What did he say?

7 A Denied it.

8 Q When he said he wasn't, did you respond in any way
9 that you recall?

10 A I did.

11 Q How did you respond?

12 A I pointed out several of the facts, the information
13 that we had, and I said that at that point he was
14 either the shooter or he knew who the shooter was.

15 Q And why did you say that to him?

16 A Because that's what I believed.

17 Q Was that based upon some of the images from Luna?

18 A Yes.

19 Q Do you recall, Sergeant Schira, this first interview,
20 how long it was until Paul indicated Chong was the
21 shooter? How much time had passed?

22 A It was -- it wasn't -- I mean that whole interview
23 was not that long. Like I said, I think it was an
24 hour and fifteen minutes. It was probably thirty
25 minutes maybe into the interview.

1 Q Did you talk to Paul -- actually, when you were
2 talking to Paul this first time, did you ask him
3 about that item that -- or I shouldn't say that item,
4 did you ask him about the image of him at Luna where
5 you thought there was something in his hand?

6 A I did.

7 Q Do you remember as you were discussing that seeing
8 anything in the room?

9 A I did, and it was -- it was surprising to me.

10 Q Okay. What do you remember seeing?

11 A Well, he was seated at a table, and I believe there
12 was like a Kleenex box or something on the table, and
13 on top of it was this instrument. I'd never seen an
14 e-cigarette before, and looking at that, I saw that
15 one end of it was silver, and there's like a flange
16 on it, and he started -- because I was questioning
17 him about what could have possibly in his hand, what
18 was in his hand, and he mentioned he thought maybe it
19 was a beer or maybe it was the e-cigarette. And when
20 I'm looking at that e-cigarette, I'm thinking to
21 myself, I think that's what was in his hand. I had
22 never seen something like that before, and after
23 looking at it, I -- I even eventually asked him to
24 put it in his hand to demonstrate what it -- what it
25 would look like, and it was a dead ringer. That's

1 what it was.

2 Q Okay. And I'm going to direct you, it's hard now
3 because two years have passed, but back in 2013 were
4 e-cigarettes common items at that time as part of
5 your investigation, did you run into people with
6 that?

7 A I've seen them since then, but at the time I'd never
8 -- I think I maybe seen a commercial on them but I'd
9 never actually seen one.

10 Q You don't smoke yourself?

11 A No.

12 Q And you said at some point you asked him to
13 demonstrate with that e-cigarette?

14 A I did.

15 Q And did he have problems or concerns doing that for
16 you?

17 A Not at all.

18 Q And had you -- did you ask someone to come in to
19 assist in that process?

20 A I did. I believe that happened during the second
21 interview with him.

22 Q Okay.

23 THE COURT: Lights?

24 ATTORNEY SCHNEIDER: Not quite yet.

25 Q (BY ATTORNEY SCHNEIDER) So during the second

1 interview then you asked if someone could come in and
2 take a picture of him?

3 A Yes, ma'am.

4 Q Do you remember any other item he had that you asked
5 him to demonstrate with other than the e-cigarette?

6 A I don't believe there was anything else, no.

7 Q Do you remember anything about the clothing he had
8 on?

9 A He had on kind of a white jacket with some like black
10 patching, kind of like a camouflage pattern.

11 Q Okay. I'm going to show you a photo board marked
12 Exhibits 83, 84 and 85. Are you familiar with who's
13 in these photos?

14 A I am.

15 Q And who is that?

16 A That's Paul.

17 Q This is really hard for everybody in the world, and
18 we put the microphone in a bad spot, no, that's okay,
19 which maybe we'll correct at some point. Either try
20 to talk --

21 A I will.

22 Q I'm sure you have an outside voice.

23 A I do.

24 Q Use your outside voice so everyone can hear you.

25 A I'm sure.

1 Q Starting with Exhibit 83, what were you asking Paul
2 to do in that photo?

3 A To stand in a similar stance that he was taken from
4 the Luna video.

5 Q Okay. And did you do the same thing then in Exhibit
6 84?

7 A Correct.

8 Q And is the background just different as to where or
9 what's reflected behind the image of his hand?

10 A Yes. We wanted to have some different coloring
11 behind it to offset the e-cigarette.

12 Q And did you ultimately learn that the coat he is
13 wearing in these photos was the same coat he had on
14 the night of the incident?

15 A I believe so, yes.

16 Q And in the Luna images his coat pretty much appears
17 white, correct?

18 A It does.

19 Q So, again, is that just reflective of the fact you
20 said this infrared video doesn't show pattern like we
21 see here on his coat?

22 A Correct. It's not so much the color of the material,
23 but it's like the -- what the material is made of.

24 Q Okay. And then finally, in Exhibit 85, what's
25 depicted there?

1 A That is his e-cigarette.

2 Q Okay.

3 ATTORNEY SCHNEIDER: And I previously moved
4 these in. What I want to do -- Judge, just for the
5 record, defense attorney has agreed -- I'm going to
6 use what is actually a duplicate of Exhibit 84 --

7 THE COURT: Okay.

8 ATTORNEY SCHNEIDER: -- for the next
9 purposes.

10 Q (BY ATTORNEY SCHNEIDER) But just can you confirm,
11 Sergeant Schira, one of the photos labeled Exhibit 4,
12 the other one in my hand I'm holding does not have an
13 exhibit sticker on it?

14 A Correct.

15 Q Does it appear to be, though, that they are the same
16 photo?

17 A It does.

18 Q Okay. Going to direct your attention up to the
19 screen.

20 ATTORNEY SCHNEIDER: And if you could get
21 the lights, Judge?

22 THE COURT: Not a problem.

23 Q (BY ATTORNEY SCHNEIDER) And I kind of have two
24 images here on the screen. First there is an image
25 on the right-hand side of the screen. Are you

1 familiar with that image?

2 A I am.

3 Q And there is a time stamp on the top of this photo,
4 and I won't ask how good your eyesight is, but if I
5 tell you the time stamp's 1:50:29, do you agree with
6 me?

7 A I do.

8 Q And in --

9 ATTORNEY SCHNEIDER: Judge, may I have him
10 approach if he needs to?

11 THE COURT: That's fine.

12 Q (BY ATTORNEY SCHNEIDER) -- again outside voice
13 because now you're going to be further away from the
14 microphone, but in that image we have on the
15 right-hand side, can you point out for the jury what
16 was of interest or concern to you guys at one point
17 during this investigation?

18 A Yes. From the video that Sergeant Rabas had gotten
19 from the Luna cameras and then made into stills, when
20 we were watching individuals doing that rush like we
21 said going out of the bar, one of the things that
22 came up right away that we looked at was who we knew
23 to be Paul here and having this in his hand. When we
24 were looking at that, from my training and experience
25 and from other officer training and experience, that

1 looked like the back portion of a slide of a small
2 gun. I also note that we had recovered a .25 caliber
3 casing from the scene. That gun is very small. That
4 gun was designed in 1905 by John Browning. My hand
5 is approximately seven-and-a-half inches long, almost
6 eight inches long. That gun -- majority of the guns
7 that are out there are only four inches in length.
8 They're very, very small. When you hold that guy,
9 I've seen guns like that, held guns like that, the
10 back portion of that, that back portion of the slide
11 or that back dovetail looks just like that.

12 Q And you're pointing to an area which would be the
13 area kind of above where Paul Lee's right hand is
14 depicted?

15 A Correct.

16 Q And at this point had you asked Paul to confirm the
17 photos that that was in fact him in these Luna
18 images?

19 A We did.

20 Q Okay. I now -- I don't know if it -- where the best
21 spot is going to be for you to stand, but we'll do
22 this for one sec.

23 THE COURT: If we need to reference the
24 screen, I do know we have the pointer if need be.

25 Q (BY ATTORNEY SCHNEIDER) So now I'm showing you a

1 photograph, again it's Exhibit 84, but we're using it
2 here on the Elmo display. Is that -- that's, again,
3 that photograph of Mr. Lee taken at the Appleton
4 Police Department holding his e-cigarette?

5 A It is.

6 Q Okay. And what do you recall noting or seeing when
7 you asked him to hold that e-cigarette at the police
8 department?

9 A Again, from -- from my perspective, my training and
10 experience that I have, I looked at that and I just
11 -- I thought it was the same thing.

12 Q Okay. You can have a seat then, sir. Thank you.

13 THE COURT: Lights, Counsel?

14 ATTORNEY SCHNEIDER: Yes, please.

15 Q (BY ATTORNEY SCHNEIDER) Ever have a case or a
16 situation, Sergeant Schira, where someone in a fight
17 pulls an item?

18 A I'm sorry. I didn't hear you.

19 Q Ever have a situation or a case where someone who's
20 in a punch or throws a punch might be holding an
21 item?

22 A Yes.

23 Q Happen more than once in your career?

24 A Yes.

25 Q After you finished your interview, your first

1 interview with Paul, what was done at that time?

2 A We finished that initial interview. Based off of
3 that interview, I believe we had a brief discussion
4 and we applied for a search warrant for the address
5 that we believed that Chong was at.

6 Q Did officers ultimately have contact with Chong Lee
7 then that day?

8 A They did.

9 Q Do you remember about what time that was?

10 A It was -- it was early, I want to say it was around
11 five, five or six, I'm sorry, I don't remember
12 specifically.

13 Q Okay. Ultimately did you interview Chong Lee at the
14 Appleton Police Department on this day?

15 A I did.

16 Q And that interview would have a time stamp on it,
17 correct?

18 A It would.

19 Q You talked to Paul, though, again at 2:19 a.m. Does
20 that sound correct, briefly?

21 A Yes.

22 Q You remember talking about his trip as he left Luna
23 during that conversation?

24 A Yes.

25 Q Did you specifically talk about clothing or items

1 that had been found by officers?

2 A I did.

3 Q What do you remember talking to Paul about?

4 A I'm a little fuzzy on this, but I believe one of the
5 things that came up was that we had recovered a vest
6 that -- that Phong Lee had admitted to was his, we
7 had recovered a hat that Joe Thor had admitted that
8 was his, and Paul had said to them, why are you guys
9 dumping your clothes, we're not the shooters.

10 Q Did he tell you that?

11 A He did.

12 Q Did he get rid of any items that he told you about?

13 A He did not.

14 Q Then when you -- when you talked to Paul then at
15 about noon, I'm going to say the next interview is at
16 11:58 a.m., at that point was Chong Lee at the
17 Appleton Police Department?

18 A He was.

19 Q Was Paul aware of that?

20 A He was not.

21 Q Do you remember talking to Paul about what if
22 anything he knew about the coat Chong had on the
23 night of the shooting?

24 A I did.

25 Q And what was said?

1 ATTORNEY VISHNY: Okay. I'd like to
2 approach the bench.

3 ATTORNEY SCHNEIDER: I can get more
4 directed if you want me to. It's just something you
5 brought up during Paul's questioning.

6 Q (BY ATTORNEY SCHNEIDER) So as you were talking about
7 the coat with Paul, did he indicate if he knew where
8 it was?

9 A He did not.

10 Q Do you remember any comment he made to you at the
11 time you were talking about that coat?

12 A He talked about what it looked like.

13 Q Okay. Do you remember what he said?

14 A He said it looked, I guess, the best term I could
15 use --

16 ATTORNEY VISHNY: I'm going to object at
17 this point because that's not what you told me you
18 were going to elicit.

19 ATTORNEY SCHNEIDER: I still think that's
20 another question you asked Paul about but --

21 ATTORNEY VISHNY: I didn't -- Paul wasn't
22 asked if he said this to Detective Schira.

23 THE COURT: If need be, you can always
24 approach.

25 ATTORNEY SCHNEIDER: I'll go back to it.

1 Q (BY ATTORNEY SCHNEIDER) Did Paul talk about a -- in
2 addition to the -- again, excuse my language, I think
3 it's, I fucked up and I shot a guy, that was a quote
4 he said Chong had said or something Chong had said to
5 him?

6 A He did.

7 Q During this second interview around noon, did he make
8 any other comments about something Chong had said to
9 him about the shooting?

10 A He did.

11 Q What was that?

12 A He clarified a couple things. One of the things that
13 he said was that Chong had said that he had point
14 blanked Josh, the guy. He didn't say Josh, he said
15 the guy.

16 Q When he said those words, point blanked the guy, was
17 that something you had been -- that term, during this
18 time at the Appleton Police Department, had you ever
19 used that terminology?

20 A I don't believe so, no.

21 Q Do you remember if Sergeant Chue Thao ever had?

22 A I don't believe so.

23 Q Do you then -- well, I'm going to ask you this. When
24 he said that, I point blanked him, did you ask him to
25 clarify or explain that further?

1 A I guess I didn't ask him to clarify that in the sense
2 of more specifics because that's a very specific
3 term.

4 Q Okay. What do you -- and not -- what do you know
5 point blanked to mean?

6 A Close quarter combat, near contact shot.

7 Q Ultimately during that interview then, Sergeant
8 Schira, do you ask Paul to write a written statement
9 for you?

10 A I do.

11 Q And you had spoken to him for a period of time before
12 this written statement?

13 A I had.

14 Q And when you asked him to write this written
15 statement, was Sergeant Thao in the room with you?

16 A I believe Sergeant Thao had gotten up and left.

17 Q Is it a situation where during this interview
18 Sergeant Thao was always in the room with you?

19 A He was with me the majority of the interview. I
20 think he was -- he was doing something else. I
21 stayed because I was doing some paperwork on -- I
22 think we had taken some buccal swabs as well.

23 Q Okay. And prior to -- well, let me ask you this.
24 Did you ask him if he would write a statement?

25 A Yes.

1 Q And did he agree to do it?

2 A Yes.

3 Q Did you tell him he had to write a statement?

4 A No.

5 Q And when you have a witness write a statement, maybe
6 but for children, I guess, do you have them literally
7 write it themselves?

8 A Yes.

9 Q Do you go over anything with them prior to asking
10 them to write the statement?

11 A I do.

12 Q What was that?

13 A I start at the top and just talk about you need to
14 put your name and date of birth and where you live
15 and phone number on the top portion of the form, and
16 then because many times when we interview it's a
17 process, it takes a while, and what I do is while I'm
18 interviewing people I'm either taking mental notes or
19 writing notes, and once we get done, and if the
20 person agrees to do a written statement, what I do is
21 I just simply say I'm not going to put words in your
22 mouth, but what you told me was X, Y and Z. If
23 that's what you told me then that's what you want to
24 put in the report. Go ahead.

25 Q Do you ever tell them they have to put that in the

1 report?

2 A No.

3 Q Do you have situations where they write more than
4 just X, Y or Z?

5 A It goes both ways. Sometimes they put more,
6 sometimes they put less.

7 Q Is it a situation by this time for some interviews
8 you've talked to them about, you know, A through Z
9 plus the next whole series of alphabet letters if
10 there were such?

11 A Yes.

12 Q And they are allowed to write whatever they want?

13 A They write whatever they want.

14 Q Is that what was done with Mr. Lee?

15 A Yes.

16 Q I'm going to show you Exhibit 122. Are you familiar
17 with that exhibit?

18 A I am.

19 Q And what is it?

20 A It is an Appleton Police Department written statement
21 form.

22 Q Completed by whom?

23 A Paul Lee.

24 Q And the date of that was the 12th then at around
25 12:30 p.m.?

1 A Yes.

2 Q And what is written in that statement, that's Paul's
3 own handwriting, correct?

4 A Correct.

5 Q And what is written there was sentences he wrote?

6 A Correct.

7 Q So you might have prior to this said, listen, Paul,
8 we talked about these things, did you -- but did you
9 tell him he had to write that in the form?

10 A No.

11 Q And what you repeated to him were things he had told
12 you during the course of the interview?

13 A I specifically only repeat things that they tell me,
14 whoever the person is I'm talking to.

15 Q And that's been your practice in these years?

16 A All my interviews.

17 Q Okay. Do you ask him to read it?

18 A I do.

19 Q Why do you do that?

20 A I don't ever want, well, honestly, be in this
21 position where defense attorney is going to say
22 that --

23 ATTORNEY VISHNY: No. I object to that.

24 ATTORNEY SCHNEIDER: No.

25 THE COURT: Sustained. I'll strike what

1 little portion of the answer there is.

2 Q (BY ATTORNEY SCHNEIDER) Okay. So let me ask you
3 this. Are sometimes people's handwriting pretty
4 bad?

5 A Oh, yes.

6 Q Okay. So do you, before you leave, make sure either
7 you read it to them or they read it to you so you
8 understand what the words are?

9 A I do.

10 Q Have you ever had people slip in or write words in a
11 foreign language in a written statement?

12 A Yes.

13 Q So if you don't know what that word is, do you ask
14 them to write it in English?

15 A Yes.

16 Q And Mr. Lee's statement was all written in English.

17 A Yes.

18 Q And Paul then signed that written statement?

19 A He did.

20 Q When you were finished speaking to Paul at the
21 Appleton Police Department, where did he go?

22 A We gave him a ride home.

23 Q And do you remember what time that might have been?

24 A I believe it was very shortly after he finished the
25 report.

1 Q If I told you -- and I think yesterday we somewhat
2 agreed or stipulated that the time you dropped Paul
3 off was about 1:17 p.m. Does that sound right?

4 A Yes, it does.

5 Q Who was with you when you dropped him off?

6 A Myself and Sergeant Thao.

7 Q Prior -- let me ask you this because I don't know.

8 Prior to dropping Paul off, did you tell him where
9 Chong was?

10 A No.

11 Q Did you ever tell him where Chong was?

12 A I don't believe I did, no.

13 Q Did you ever hear Sergeant Thao or anyone else
14 explain where Chong was to him?

15 A I don't believe so, no.

16 Q And at that time when you dropped him off, that was
17 the home where he lived with his sister?

18 A Correct.

19 Q So now I want to focus your attention, it's going to
20 seem weird, but if this was a movie reel, we're going
21 to go backwards the day of December 12th.

22 Earlier in the morning hours before you spoke to
23 Paul again around noon, did you have responsibilities
24 to speak to anyone else?

25 A I did.

1 Q Who was that?

2 A Chong Lee.

3 Q Is the Chong Lee that you spoke with here today in
4 the courtroom, Sergeant?

5 A Yes, ma'am.

6 Q Is he seated at the defendant's table in a light blue
7 shirt?

8 A Yes, ma'am.

9 ATTORNEY SCHNEIDER: I would ask the record
10 reflect identification.

11 THE COURT: The record shall so reflect.

12 Q (BY ATTORNEY SCHNEIDER) And as part of -- as part of
13 the work in this case, when Chong Lee was found at
14 his home were items taken from the home as well?

15 A There were.

16 Q And when you're at a house and you may be collecting
17 items, do you always know what to collect?

18 A Well, we -- we ask for specific things in the search
19 warrant.

20 Q Okay. But if you're looking for clothing, you know,
21 unless you get a very specific description like a
22 pair of Grinch flannel pajama pants, do you collect
23 anything that might be relevant?

24 A Yes.

25 Q Why?

1 A Because it might be relevant.

2 Q Okay. I'm going to show you two photos, Exhibit 86
3 and then Exhibit 87. Are you familiar with what's
4 depicted there, Sergeant?

5 A I am.

6 Q What's first in Exhibit 86?

7 A Wisconsin ID card.

8 Q And who is that for?

9 A Chong Lee.

10 Q That was located where?

11 A I didn't specifically grab that. I was told that was
12 grabbed, and I saw it when it was coming out, but I'm
13 not positive, I believe it was taken from the
14 downstairs bedroom.

15 Q At his home?

16 A Correct.

17 Q And Exhibit 87, what's that a photograph of?

18 A That is a gray Brewers hat.

19 Q Okay. Found at that home as well?

20 A Correct.

21 Q Was it found in the same room as the wallet?

22 A I believe so.

23 ATTORNEY SCHNEIDER: I move 86 and 87 in at
24 this time, Your Honor.

25 THE COURT: Any objection?

1 ATTORNEY VISHNY: No.

2 THE COURT: 86 and 87 will be received.

3 Q (BY ATTORNEY SCHNEIDER) I'm going to next show you,
4 Sergeant, what's been marked as State's Exhibit No.
5 95?

6 A Okay.

7 Q Are you familiar with, excuse me, are you familiar
8 with that item?

9 A Yes.

10 Q What is that item?

11 A The -- the hat.

12 Q Okay. So in essence 87 is a photograph, 95 is the
13 actual hat?

14 A Correct.

15 ATTORNEY SCHNEIDER: I move 95 into
16 evidence at this time.

17 THE COURT: Any objection?

18 ATTORNEY VISHNY: No objection.

19 THE COURT: 95 will be received.

20 ATTORNEY VISHNY: I'm sorry, Miss
21 Schneider, the hat is what number?

22 ATTORNEY SCHNEIDER: 95.

23 ATTORNEY VISHNY: And the other one is?

24 ATTORNEY SCHNEIDER: 86, 87.

25 Judge, this may be somewhat of a logical point

1 to take a break because I need to adjust the
2 equipment a little bit before we get to the next
3 part, and I anticipate it will be a little lengthy
4 with, you know, I'm going to need at least an hour
5 probably without a break so --

6 THE COURT: Let's make it a short break.
7 We'll -- I want to start promptly at ten to four.

8 (The jury was escorted out of the
9 courtroom.)

10 (Court in recess.)

11 (The jury was escorted into the courtroom.)

12 ATTORNEY SCHNEIDER: Can I ask few
13 questions?

14 THE COURT: You tell me.

15 Q (BY ATTORNEY SCHNEIDER) Sergeant Schira, at the
16 Appleton Police Department, the interview room where
17 you spoke to Chong, is that recorded?

18 A It is.

19 Q Is that a video and audio recording?

20 A It is.

21 Q Does that in some ways allow you not to have to take
22 so many notes?

23 A It does.

24 Q When you started as an investigator, I don't mean to
25 say this in a bad way, but did you even ever video

1 record interviews when you first started as an
2 investigator?

3 A No.

4 Q Would you have the ability when you first started to
5 have like a recorder where you could try to record
6 the audio?

7 A Yes.

8 Q Would you then still rely upon taking notes?

9 A Yes.

10 Q And that's kind of as technology has advanced some of
11 that has gone away because of technology, correct?

12 A Correct.

13 Q And the person that was doing the interview with you,
14 that person's name again was?

15 A Sergeant Cary Meyer.

16 Q Okay.

17 ATTORNEY SCHNEIDER: And, Judge, I'm going
18 to be playing what we've marked as Exhibit 94.

19 THE COURT: Okay.

20 ATTORNEY SCHNEIDER: If you could get the
21 lights now.

22 THE COURT: Certainly.

23 Q (BY ATTORNEY SCHNEIDER) And so, just to start,
24 Sergeant Schira, the image that we see up on the
25 screen is what room at the Appleton Police

1 Department?

2 A That is an interview room.

3 Q Okay. So we see a gentleman in a black hooded
4 sweatshirt. Who is that person?

5 A That is myself.

6 Q Okay. And the person I'm going to say seated more at
7 the table with maybe a -- knowing Sergeant Meyer, I
8 would say maybe a lighter pale green?

9 A Mint.

10 Q I believe it's a mint green dress shirt?

11 A Yes.

12 Q And across from both of you, who is that
13 individual?

14 A That is Chong Lee.

15 Q The defendant in this case?

16 A Yes.

17 ATTORNEY SCHNEIDER: So, Judge, what I'm
18 going to do at this time is play the interview. It
19 is lengthy. We will have to take some pauses and
20 some time. Sergeant Duros -- or Mr. Duros is going
21 to be in charge of that, but otherwise at this time I
22 would ask for permission to play Exhibit 94.

23 THE COURT: That's fine. And why don't we
24 do this. Start it and let the -- just so that the
25 jury can get a sense of the volume, and then I'm

1 going to ask if the volume is okay.

2 ATTORNEY SCHNEIDER: Okay.

3 (Video played.)

4 THE COURT: And is that -- is that volume
5 sufficient for everyone?

6 ATTORNEY SCHNEIDER: For the record, I'm
7 kind of crazy about this, 7:57:08 to 7:57:19 is the
8 next section we just played. We're going to move it
9 back to the start point.

10 THE COURT: That's fine. Thank you.

11 (Video played.)

12 ATTORNEY SCHNEIDER: I don't know if this
13 is a scratch on the disk, so I just ask if we can
14 have thirty seconds to excuse the jury and I'll try
15 to adjust something on the player?

16 THE COURT: That's fine.

17 (The jury was escorted out of the
18 courtroom.)

19 THE COURT: Bring them in.

20 (The jury was escorted into the courtroom.)

21 ATTORNEY SCHNEIDER: So we backed it up
22 just a few seconds to 8:43:39 and we'll resume it at
23 that point.

24 (Video played.)

25 ATTORNEY SCHNEIDER: Just for the record,

1 Judge, we played a section from 8:49:57 to 8:59:33 at
2 like an eight speed on the player because the parties
3 weren't in the room at that point. We'll resume this
4 now then at regular speed.

5 (Video played.)

6 ATTORNEY SCHNEIDER: So then we stopped it
7 at 9:00:01 and we're resuming it at 9:00 -- 9:00:08.

8 (Video played.)

9 ATTORNEY SCHNEIDER: We stopped it at
10 9:00:40 and we're going to pick it up at 9:00:47.

11 (Video played.)

12 ATTORNEY SCHNEIDER: Stopped it at 9:01:01.
13 Okay. Picking it up at 9:01:04.

14 (Video played.)

15 ATTORNEY SCHNEIDER: Stopped it at 9:04:34,
16 pick it up at 9:04:44.

17 (Video played.)

18 ATTORNEY SCHNEIDER: Stopped at 9:07:07,
19 going to pick it up at 9:08:35.

20 (Video played.)

21 ATTORNEY SCHNEIDER: Stopped at 9:11:35.
22 Picking it up at 9:11:41 -- picking up at 9:11:47.

23 ATTORNEY VISHNY: One minute. Judge, can
24 we approach please?

25 THE COURT: You may.

1 (Bench conference.)

2 ATTORNEY SCHNEIDER: Going to pick it up at
3 9:11:48.

4 (Video played.)

5 ATTORNEY SCHNEIDER: Stopped at 9:11:20.
6 I'm sorry, 9:13:20. We're picking it up at
7 9:13:49.

8 (Video played.)

9 ATTORNEY SCHNEIDER: Stopped it at 9:17:11,
10 and then pick it up at 9:17:26.

11 (Video played.)

12 ATTORNEY SCHNEIDER: We stopped it at
13 9:17:34.

14 Judge, can we turn the lights back on please?

15 Q (BY ATTORNEY SCHNEIDER) When you were speaking with
16 the defendant in this case, he mentioned Sharks. Do
17 you recall that?

18 A I do.

19 Q And specifically what did he say in relationship to
20 what he did related to Sharks that night?

21 A He said that after leaving Luna he went to Sharks.

22 Q And prior to that, do you know if your investigation
23 had any information that he had been at Sharks?

24 A Yes.

25 Q And at some point officers continued to follow up on

1 that?

2 A Yes.

3 Q And after this interview with the defendant, were --
4 was it a situation where interviews continued?

5 A Yes.

6 Q Was it a situation then where you went back to some
7 of the people that had been spoken to before?

8 A We did.

9 Q At some point were items from Milwaukee obtained?

10 A Yes.

11 Q And some of those items related to a hotel?

12 A Correct.

13 Q And that came after this day?

14 A After what?

15 Q After the date of the interview, December 12th,
16 2013?

17 A Yes.

18 Q Okay. And after this date, I want to direct your
19 attention, fast forward a little bit, Sergeant
20 Schira, to January 21st of 2014.

21 A Okay.

22 Q Do you remember what was done on that day?

23 A I think I do, but I don't want to misspeak.

24 Q Okay. Officers obtained different letters on January
25 21st, 2014, correct?

1 A They did.

2 Q And it wasn't just from one location but from a
3 variety of locations?

4 A Correct.

5 Q And were those letters -- some were collected from
6 the defendant's jail cell, correct?

7 A Correct.

8 Q And up to that point, what was the basis that law
9 enforcement wanted to collect the letters?

10 A There were letters that were being sent to people
11 involved, witnesses, specifically asking them or --

12 ATTORNEY VISHNY: Judge, I'm going to
13 object. I think whatever letters the State puts in
14 will speak for themselves.

15 ATTORNEY SCHNEIDER: But it's -- maybe I
16 can --

17 ATTORNEY VISHNY: I will agree the police
18 had a basis for a search warrant if that helps. I'm
19 not challenging that.

20 ATTORNEY SCHNEIDER: No. I might be able
21 to ask some questions.

22 Q (BY ATTORNEY SCHNEIDER) During this intervening time
23 from December 12th to January 21st, were jail phone
24 calls listened to?

25 A They were.

1 Q A few or several?

2 A Many.

3 Q And was that a basis for why you went to look for
4 letters?

5 A Yes.

6 Q I'm going to -- as part of this case, do you know a
7 person who's named Nhia, spelled N-H-I-A, Lee?

8 A I do.

9 Q And who is Nhia Lee?

10 A He is Chong's brother. I believe he is an older
11 brother.

12 Q And --

13 ATTORNEY SCHNEIDER: Your Honor, if I may
14 approach?

15 THE COURT: You may.

16 Q (BY ATTORNEY SCHNEIDER) Just for the record, I'm
17 showing you what has been marked Exhibit No. 4; is
18 that correct?

19 A It is.

20 Q And kind of a little crazy about this. How many
21 pages is No. 4?

22 A It is one page with an envelope cover.

23 Q Is it actually the front and the back of the
24 envelope, three pages?

25 A Yes.

1 Q Okay. And the envelope, it is not mailed yet,
2 correct?

3 A Correct.

4 Q And who is it addressed to?

5 A Nhia Lee.

6 Q And who is it addressed from?

7 A Chong Lee.

8 Q And after officers obtained these letters, were you
9 involved in reviewing some of them?

10 A I was.

11 Q And this letter was located where again?

12 A In Mr. Chong Lee's cell.

13 Q Okay. Okay. I'm going to direct you to read just
14 the highlighted portions here, Sergeant Schira.

15 A I'm going to just -- okay.

16 Q So if you can read the first highlighted portion.
17 And this is the start of the letter starts this way,
18 correct?

19 A Correct.

20 Q Please read that.

21 A It starts with, hey big bro. Yeah. I got what
22 you're saying but I ain't trying to prove anything.
23 I do what I do because that's just me. I do whatever
24 to protect family and friends. That's all.

25 Q Then is there a reference in the next paragraph?

1 A It does.

2 Q What's that say?

3 A Joe and Pao suppose to recant. If they recant at the
4 prelims then this case is going to get dropped.

5 Q What's a -- he references the term prelims. What is
6 that?

7 A A preliminary hearing.

8 Q Okay. Is that a court hearing related to a case when
9 someone is charged?

10 A It is.

11 Q And as of this date, January 21st, 2014, the
12 preliminary hearing in this case had not occurred
13 yet, correct?

14 A Correct.

15 ATTORNEY SCHNEIDER: I would move Exhibit 4
16 in at this time.

17 THE COURT: Any objection?

18 ATTORNEY VISHNY: No.

19 THE COURT: Exhibit 4 shall be received.

20 ATTORNEY SCHNEIDER: And I have no further
21 questions at this time.

22 THE COURT: And just finish my notes here.

23 And I'm guessing after that questioning that
24 counsel will have significant questioning, and so
25 rather than hold you into the late night hours, let's

1 break, but I'd like to have counsel come up here
2 first just so we can get a good gauge on what time we
3 should ask the jury to be here for starting time
4 tomorrow.

5 (Bench conference.)

6 THE COURT: All right. So we will start at
7 8:45 tomorrow. You are released for the evening.
8 Thank you again.

9 (The jury was escorted out of the
10 courtroom.)

11 THE COURT: We had two sidebars related to
12 hearsay identification by Joe. That was originally
13 sustained.

14 There was a second sidebar related to hearsay
15 objecting on Phong not IDing Chong in photographs.
16 For reasons that the court also explained off the
17 record during the in camera, that was overruled.

18 I believe those were the only two substantive
19 sidebars that we had.

20 ATTORNEY VISHNY: Yes. That's correct.
21 Just to supplement my record, our objection was that
22 neither Joe Thor nor Phong Lee had ever been asked
23 whether or not they had been shown pictures of Mr.
24 Chong Lee and said that they didn't know him so our
25 objection was a hearsay objection.

1 THE COURT: Yes.

2 ATTORNEY VISHNY: And that -- in our
3 opinion there was no hearsay exception. Thanks.

4 (Proceedings concluded.)
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C E R T I F I C A T E

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5 STATE OF WISCONSIN)
6 COUNTY OF OUTAGAMIE) ss.:

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8

9 I, JOAN BIESE, RMR/CRR, do hereby certify that I
10 am the official court reporter for Branch IV of the
11 Circuit Court of Outagamie County;

12 That as such court reporter, I made full and
13 correct stenographic notes of the foregoing proceedings;

14 That the same was later reduced to typewritten
15 form;

16 And that the foregoing proceedings is a full and
17 correct transcript of my stenographic notes so taken.

15

18 Dated this 8th day of August, 2016.

17

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JOAN BIESE, RMR/CRR

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